



**Stratham Zoning Board of Adjustment  
Meeting Minutes  
October 15, 2024  
Stratham Municipal Center  
Time: 7:00 pm**

**Members Present:** Brent Eastwood, Vice Chair  
Frank MacMillan, Member  
Lucy Cushman, Member  
Donna Jensen, Member

**Members Absent:** Drew Pierce, Chair  
Jameson Paine, Member

**Staff Present:** William Dinsmore, Building Inspector, Code Enforcement

## 1. Call to Order/Roll Call

Mr. Eastwood called the meeting to order at 7:00 pm and took roll call. Mr. Eastwood appointed Ms. Jensen as a voting member for the meeting.

## 2. Approval of Minutes

a. June 6, 2024

Mr. Eastwood made a motion to table approval of the June 6, 2024, meeting minutes to the next regularly scheduled meeting. Mr. MacMillan seconded the motion. All voted in favor and the motion passed.

### 3. New Business:

a. Case #680: Dale Harrington, (Applicants), Tara C. Spencer (Owner), 14 Wiggin Way, Stratham NH 03885, Tax Map 11, Lot 048, Zoned Residential. The Applicant seeks an appeal from administrative decision of the Code Enforcement Officer as well as a variance from sections 5.14 and 11.3.2 of the Stratham Zoning Ordinance to allow for a small shed to be placed on very poorly drained wetlands where it is not allowed.

## Part 1 of Case #680: Appeal of Administrative Decision.

Mr. Eastwood stated the original meeting on October 1<sup>st</sup> was postponed due to an error in the public notice for the public hearing. The applicant's counsel was informed that only four members would be present to vote on the application this evening and was provided the opportunity to postpone to a subsequent meeting. The applicant chose to move forward with the four members tonight. There are two applications under this case, an appeal from administrative decision and a variance application.

45 The Zoning Board will consider the appeal from the administrative decision first and decide on that  
46 application before hearing the variance application. The Board will reopen the public hearing for the  
47 second application if necessary as it may become moot if the board approves the appeal from the  
48 administrative decision. Mr. Eastwood asked the applicant to start the presentation.  
49

50 Christopher Hilson, attorney from Donahue, Tucker and Ciandella, spoke on behalf of Dale  
51 Harrington, the applicant. Mr. Hilson stated that Mr. Harrington wants to do the right thing and would  
52 like dispensation from the Board as necessary. Mr. Hilson stated the evidence, and the arguments  
53 associated with these applications overlap to a great degree. Mr. Hilson stated the shed is not on Mr.  
54 Harrington's property and is located on the property of Tara Spencer's who is present for the meeting.  
55 Mr. Harrington has engaged in a sap collection system on Ms. Spencer's property with her full support.  
56 That sap collection system goes into abutting properties through a series of tubes, all done with the  
57 approval of the landowner. The tubes are tapped into maple trees. They flow down gradient into a  
58 collection basin and are periodically emptied. Mr. Hilson mentions the structure is six feet by six feet  
59 and is in very poorly drained soil. He explained that Mr. Harrington has invested considerable sums  
60 of money tapping the trees, and he installed a network of tubes so that he can utilize the topography  
61 of the property to drain down to where the sap is collected at a location in the northwest of the property.  
62 Mr. Hilson stated there are culverts here already, and when Mr. Harrington first started, the area was  
63 full of trash and dog feces bags. He cleaned up the trash as part of his efforts and installed a six foot  
64 by six foot shed on top of paving stones. The shed is not affixed to the ground and there is no  
65 foundation, no gas, no water, and no septic. The prefabricated shed is similar to normal residential use  
66 but instead will house a small vacuum pump to increase the harvest of sap. Mr. Harrington will come  
67 by periodically on Wiggin Way and empty it out into a tank on his trailer. There was no machinery  
68 necessary to construct the shed, it was done by hand. Pieces were carried in by foot after he cleaned  
69 up the area, and he built it on site with the help of a friend. There was no dredging, and no filling  
70 associated with this. He has not impeded any water. Water can freely flow underneath the structure.  
71 Mr. Harrington spoke with the property owner who had been advised by the prior code enforcement  
72 officer that you can place a shed where you want, as long as it is not in the setback. Mr. Hilson stated  
73 that ordinance changed in March 2024, and now says you cannot place a structure or a shed in the  
74 resource area. Mr. Dinsmore informally approached Mr. Harrington who wants to comply. Mr. Hilson  
75 spoke with the Town Planner, Mark Connors, who advised that it would be best for Mr. Dinsmore to  
76 issue a formal determination. Mr. Hilson then filed a supplement to what was submitted previously.  
77

78 Ms. Cushman asked if before March 2024, you were able to put a shed in a very poorly drained  
79 wetland. Mr. Hilson replied the current Zoning Ordinance is dated March 2024. Ms. Cushman stated  
80 she does not believe that prior to that it was ok to put any sort of building in very poorly drained soil.  
81 Mr. Dinsmore stated the small accessory structure was adopted into the ordinance in March 2024. Mr.  
82 Hilson replied that they are seeking relief from Section 5.14 of the ordinance, which is new in 2024.  
83 He assumes that the change in 2024 meant that a permit wasn't needed prior to that. Mr. Hilson filed  
84 two applications, one for an appeal of administrative determination and one for a variance if the Board  
85 does not grant the appeal. The appeal from administrative determination is essentially twofold, first  
86 that this is an agricultural use. The ordinance provides for a very broad definition of agricultural uses  
87 that includes not just pasturing a cow or cutting hay, but it's all accessory uses associated with an  
88 agricultural use. The town has incorporated by reference the state definition of agriculture and  
89 agricultural uses, which is very broad. Mr. Hilson stated it is very clear that what Mr. Harrington is  
90 doing here is agricultural use, which is important, because there is a preemption issue under RSA  
91 674:33A which is a preemption statute for agricultural uses and agricultural operations that unless they  
92 are explicitly addressed in an ordinance, they are deemed permitted. Mr. Hilson stated there's nothing  
93 in the Town's ordinance about sap collection, about vacuum pumps associated with maple sugaring,

94 and nothing about maple sugaring at all. He stated that unless the Town's ordinance expressly  
95 addresses an agricultural use, it is deemed permitted by virtue of state law. That is the first issue that  
96 he has with the administrative appeal. The second is that in this case there is no fixed location for the  
97 structure. It is a shed on pavers or cinder blocks that can be readily moved. The location was chosen  
98 for the topography for what Mr. Harrington is trying to do, which is to collect sap. Mr. Hilson does  
99 not believe the shed meets the Town's definition of structure and in Section 11.3.2 of the Wetland's  
100 Conservation Ordinance, agricultural uses are allowed, presuming they do not involve any dredge and  
101 fill or involve the erection of a structure. Mr. Hilson stated that the definition states it needs to be in a  
102 fixed location, or it needs to be attached to something with a fixed location, and this shed does not  
103 meet that. He stated that in Section 5.14 of the Ordinance, it delineates a difference between structures  
104 and sheds. If you assume a shed is a structure as defined in the Zoning Ordinance, then you are creating  
105 redundant language in Section 5.14 which is not consistent with statutory interpretation. Mr. Hilson  
106 offered to describe the variance application as well but asked first if there are any questions.  
107

108 Mr. Eastwood asked Mr. Hilson how the vacuum pump was powered and Mr. Hilson answered through  
109 an electrical line. Mr. Harrington added that it's an extension cord hung through the woods and rolled  
110 up when not in use.  
111

112 Mr. Eastwood asked if the vacuum pump is oiled. Mr. Harrington replied that he is not 100% sure. Mr.  
113 Hilson added that his understanding is that it is not a serious vacuum and only needs to be under a  
114 slight vacuum. Mr. Harrington said it's possible that it is an oiled vacuum. Mr. Hilson stated that the  
115 need for the shed is to keep the pump warm so it doesn't freeze.  
116

117 Ms. Jensen asked for clarification on access to the shed and how the collection system works. Mr.  
118 Harrington replied a hose will be extended to a trailer parked on the street.  
119

120 Mr. Hilson stated that this case was reviewed by the Conservation Commission as well and they voted  
121 not to recommend this as they universally do not approve structures in wetlands. He stated there could  
122 be a lot more wear and tear on this resource area if the collection system was fashioned in a different  
123 way. Theoretically, people could tramp through the wetlands and collect the sap with the buckets like  
124 they used to do. If the lines are down, they're not disturbing anything, and they don't impound water.  
125

126 Ms. Cushman stated that she can't wrap her head around the fact that we would allow anything to be  
127 constructed in the wetlands and feels very strongly that the Conservation Commission is the group  
128 who provides recommendations to the ZBA on issues that are related to very poorly drained soil, and  
129 she has a hard time seeing that a shed is not a structure. She believes a wooden shed is a structure and  
130 struggles with contradicting the Conservation Commission's decision. Mr. Hilson responded that the  
131 Conservation Commission is not empowered to make that decision, the decision resides with the  
132 Zoning Board. He stated that the dynamic would be upended if the Board constantly defers to them  
133 because they have a very narrow scope of what they are supposed to be doing in Town. He stated the  
134 ZBA has more authority than the Conservation Commission. Mr. Hilson continued that merely because  
135 something is a resource area doesn't mean it can't be touched or cannot be used. He stated that the best  
136 way to illustrate that, is in the ordinance, regardless of very poorly drained or poorly drained soils, the  
137 Ordinance allows catwalks, bridges, and wharves. Mr. Hilson stated there are no size limitations to  
138 those improvements in the ordinance and no impervious surface calculations that need to be completed.  
139 Speaking to the spirit of the ordinance and whether something should be permitted or not permitted in  
140 a resource area, he stated you need to look at the other similar uses which are unquestionably allowed  
141 in that resource area. Mr. Hilson believes there is more impervious surface area allowed as a matter of  
142 right within this resource area. Ms. Spencer added that the poorly drained wetlands, literally stake

143 around the corners of her house, which seems ironic because she doesn't know if it was originally that  
144 way or if it ended up that way. She stated that where the shed is, the road goes right through the middle  
145 of the wetlands, and the town built a tunnel under the driveway for the water to flow under the road  
146 and the shed is right next to that. She stated that the shed is not within the middle of the wetlands, it's  
147 where the road is already.

148  
149 Mr. MacMillan asked for clarification on the difference between wetlands, poorly drained soil, and  
150 very poorly drained soil in the ordinance. Mr. Dinsmore directed him to Section 11.2.1. Mr. Hilson  
151 added that Section 11.3.2, lists acceptable uses within very poorly drained soils which includes fences,  
152 footbridges, catwalks and wharves. He stated that the ordinance allows structures larger than this shed  
153 and the pilons allow unobstructed flow of water and underneath the shed itself.

154  
155 Ms. Jensen stated that post and piling is permitted construction, because it's allowing the water to flow.  
156 She stated there are a lot of catwalks through wetlands in town, including at the Great Bay Center, and  
157 they are constructed on pilings. The boards going across have enough space in them, so the water goes  
158 through and in her opinion, they are basically pervious. Her objection to the shed is it is not pervious  
159 and if that were on pilings or on geotechnical screws she would agree with Mr. Hilson, but she does  
160 not see that here. Mr. Harrington disagreed and described that there is only one, two-inch thick block  
161 under each corner and there is no foundation. Mr. Hilson added that the ordinance doesn't reference  
162 any of those types of features and he read from 11.3.2.b. of the ordinance and described how the project  
163 meets each criteria. He stated that the ZBA process is to review the application of the ordinance and  
164 applicable state law.

165  
166 Mr. Eastwood asked when the shed was constructed. Mr. Harrington replied about 3 months ago. Mr.  
167 Eastwood asked Mr. Dinsmore what the language of the ordinance prior to March 2024 was. Mr.  
168 Dinsmore provided Mr. Eastwood with a copy of the 2023 ordinance. Ms. Cushman referenced Mr.  
169 Dinsmore's decision which states that the definition of the word structure came from 2018 building  
170 Code which states "anything that is built or constructed". Mr. Hilson replied that he does not think  
171 legally the town can graft a different definition onto the town's definition unless it incorporates it by  
172 reference in that definition. Ms. Cushman replied that the town has adopted the building code. Mr.  
173 Hilson agreed. Mr. Dinsmore replied that if you look at the definition of structure in the ordinance,  
174 you'll see anything that he might have referenced and if the ordinance is silent, then the locally adopted  
175 building code definition should be used for structures. Mr. Eastwood read aloud the definition of  
176 structure from the ordinance. Ms. Cushman highlighted the sentence regarding where the ordinance is  
177 silent, the building code applies, and she read the definition of structure from the building code.

178  
179 Mr. Hilson asked Mr. Dinsmore how can you square those two definitions? He does not believe that  
180 one can say that the zoning ordinance is silent on a definition of structure. He believes that the building  
181 code's definition is far broader than the narrowly tailored definition of structure under 2.1.83 of the  
182 zoning ordinance. Mr. Hilson believes Mr. Dinsmore is impermissibly grafting and expanding what  
183 the voters have approved in the zoning ordinance by grafting in a different definition for structure. Mr.  
184 Dinsmore explained that section 5.14 of the ordinance did not exist in 2023. Mr. Eastwood asked for  
185 confirmation that it would fall under structure and asked if a shed was allowed prior to March 2024 to  
186 be constructed in wetlands. Mr. Dinsmore stated that this shed would fall under the 2024 ordinance.

187  
188 **Mr. Eastwood made a motion to open the public hearing. Ms. Cushman seconded the motion.**  
189 **All voted in favor and the motion passed.**

190  
191 Mr. Eastwood asked the public if there is anyone that wanted to speak.

192 Drew Goddard of 1 Sanctuary Drive spoke in support of the application. He stated that he has built a  
193 deck, a driveway, and a roof in shoreland areas. He stated that Mr. Harrington is not looking to store  
194 lawn mowers, and the use is agriculture with no gas and no hazardous materials. Mr. Goddard asserted  
195 that the data regarding wetlands, poorly drained and very poorly drained may be old and the wetlands  
196 may be migrating, especially after developments such as Wiggin Way and Strawberry Lane were  
197 constructed. He believes that Stratham's ordinance is far stricter for structures setbacks than any other  
198 community. He believes the structure is movable, it's not affixed to anything, and it won't house any  
199 hazardous materials.

200  
201 Steven Roy of 14 Christie Lane and President of the Wiggin Way Winterberry Homeowner's  
202 Association spoke in opposition to the application. His property is two lots down from the stream  
203 where the shed is located, and he stated the shed is located in the stream. The stream flows past his  
204 property to the Winnicutt River. He stated that about one-half mile away near the river, Aquarian  
205 Water Company has one of its water supply wells that supplies water to 43 houses in the Wiggin Way  
206 Winterberry Homeowners Association. He is concerned with setting precedent and stated if a shed like  
207 this is allowed, then other activities can occur within this drainage area for the public water supply.  
208 He believes the rules are clear and he works with environmental regulations all the time. Mr. Roy  
209 believes that if you put something on the land surface, it's a structure. It doesn't matter whether there  
210 are piers or connections to the ground, it's there. He stated that the solution is clear, tap the maple trees,  
211 but don't put a shed in a jurisdictional wetland.

212  
213 Sean Burke at 138 Bunker Hill Avenue stated that his sister is an abutter that donated the use of her  
214 trees to Mr. Harrington. She is in full support of the use of the land. Mr. Burke stated that Mr.  
215 Harrington has cleaned up the wetlands, he has made it a better source of water for the Wiggin Way  
216 Winterberry HOA, and the use of the shed will continue to ensure that. He believes this is an  
217 agricultural purpose and he supports his neighbor.

218  
219 George Waldron of 1 Tansy Avenue spoke in support of the application. He stated he lives next to Mr.  
220 Harrington and that common sense has to come into play and he thinks this is a pretty tame use of  
221 property. He has known Mr. Harrington for a long time and he believes Mr. Harrington will make  
222 100% effort to do everything right.

223  
224 John St. Pierre of 15 Jason Drive spoke in support of the application. He stated that that he has known  
225 Mr. Harrington for a while, worked with him, and he does things the right way, and has the best  
226 intentions for everything that he does. Mr. St. Pierre does not believe the shed is fixed to the ground.  
227 Regarding the construction of piers, pilons need to go down into the ground, the wildlife is disturbed  
228 by the penetration of those pilons into the ground. This project is only four pieces of cinder block that  
229 is under each corner that allows water to freely go through it. Mr. St. Pierre stated there is no oil, gas,  
230 or anything that will affect a water source. He believes that Mr. Harrington, by cleaning up the trash  
231 and trying to use the property for an agricultural use, has already shown that he's taken care of it and  
232 that he cares about what he's doing there.

233  
234 Jeff Sonneborn at 8 Wedgewood Drive spoke in support of the application. He stated that Mr.  
235 Harrington will continue the sap collection operation without the shed which Mr. Sonneborn believes  
236 will do much greater damage to the wetland area than without the shed there. He stated that he loves  
237 Stratham, it's agricultural roots, and he looks forward to getting some local maple syrup here soon.

238  
239 Mr. Roy added to his original statement that if the comments are all about the shed not being  
240 permanent, not affixed to the ground, easily movable, then the solution is to move it out of the

241 jurisdictional area. He believes it is the obvious solution to the issue and to let the maple tapping  
242 continue. He reiterated his concerns with the water supply resource. The HOA has heightened concern  
243 because their original wells were contaminated and the only solution was to connect with the Aquarion  
244 Water Company. He added that if the board decides the shed can be moved, it can easily be moved  
245 outside of the wetland, and then we're beyond this issue.

246  
247 Ms. Cushman stated that Mr. Roy has a good point and there should be a better place to move the shed  
248 to other than on the wetlands. Mr. Hilson replied that the location is needed due to topography.  
249

250 **Mr. MacMillan made a motion to close the public hearing. Ms. Cushman seconded the motion.**  
251 **All voted in favor and the motion passed.**

252  
253 Mr. Eastwood asked if there were any emails or letters that the Board received on the application.  
254

255 **Mr. Eastwood made a motion to reopen the public hearing and Mr. MacMillan seconded the**  
256 **motion. All voted in favor and the motion passed.**

257  
258 Mr. Eastwood read aloud an email from Christopher Lord of 7R Winnicutt Road in support of the  
259 application. Mr. Lord could not attend the meeting but has no concerns with the maple sugaring plans.  
260

261 Mr. Eastwood read aloud an email from Julie Maislen of 10 Wiggin Way in support of the application.  
262 Ms. Maislen stated she is a long-term resident of Stratham and supporter of the agricultural  
263 community. She is the closest neighbor to the project and stated that Mr. Harrington is a person of  
264 good character, and he has been proactive in his communication about his project.  
265

266 **Mr. MacMillan made a motion to close the public hearing. Ms. Cushman seconded the motion.**  
267 **All voted in favor and the motion passed.**

268  
269 Ms. Cushman asked about the last variance for a shed near the wetlands and if it was in the wetlands.  
270 Mr. Dinsmore replied it was a variance granted for the location of a shed slightly larger than allowed  
271 in a buffer area of a wetlands. Ms. Cushman clarified that it was done with a positive recommendation  
272 from the Conservation Commission. She understands that it's just a recommendation from them, but  
273 she stated that she has a lot of respect for the Conservation Commission and a lot of respect for the  
274 soil-based zoning, which is something that Stratham has had for a long time. Ms. Cushman stated  
275 Stratham was one of the first towns to implement it, and it was because there is no municipal water  
276 and sewer in town and the town wanted lots to be determined by the quality of the soil that is there, to  
277 make sure that there were no structures in inappropriate soil types. She added that she has a lot of  
278 respect for the decision of the Code Enforcement Officer. She stated that she understands what the  
279 building code says and what the zoning says and it looks like a structure to her.  
280

281 Mr. Hilson stated he would like to address the public comments received. He is very impressed with  
282 the number of people who came out to support his client. He reiterated that this property is in the  
283 Residential/Agricultural zoning district and agricultural uses are allowed in the Wetlands Conservation  
284 District. Mr. Hilson does not agree with Mr. Boyd's statement that there is a stream under the shed.  
285 He stressed the agricultural use and that there are dispensations, both in Stratham's ordinance and in  
286 state law which he previously spoke about. Regarding moving the shed, it could probably be moved a  
287 couple feet left or right, but it won't address it as it needs to be at the low point of the lot in order to  
288 work.  
289

290 Mr. Eastwood stated that the Board will begin deliberations and will not accept any additional  
291 comments, either from the applicant or from members of the public. The Board needs to vote to either  
292 uphold the decision of the administrative official or to grant the appeal and overturn the decision. He  
293 provided instructions to the Board.

294  
295 Mr. MacMillan stated that he thinks the Board should discuss the definition of a structure. He noted  
296 Section 5.14 of the ordinance adopted in March 2024 allows small accessory structures or sheds less  
297 than or equal to 120 square feet in an area that may be constructed no less than five feet from the side  
298 and rear of the property boundary and no less than 15 feet from wetland boundary and shall not require  
299 the issuance of a building permit. He then noted the definition of a structure on page 12 of the Zoning  
300 Ordinance and that definition excludes septic tanks and associated infrastructure and prefabricated  
301 children's playsets. He stated there is no exception for a small accessory structure or a shed. Ms.  
302 Cushman added that's where the most current edition of the State Building Code would be applied.  
303 The building code that was adopted and that was in effect when the shed was installed was the 2018  
304 IRC Building Code which has a structure definition of "that which is built or constructed".

305  
306 Mr. Eastwood stated that he is not finding an error with the decision made by the Building Inspector.  
307 Ms. Cushman added that she wonders why Mr. Harrington didn't go to the building inspector for  
308 questions and has no objection to what Mr. Harrington is doing there. Mr. Dinsmore clarified that the  
309 ordinance, as well as New Hampshire state building code, exempts this structure from essentially  
310 needing a permit. He does not believe there was anything done wrong as far as building code goes,  
311 because the structure was not required to have a building permit, but the zoning ordinance still applies.

312  
313 **Mr. MacMillan made a motion that the Zoning Board of Adjustment deny the appeal of the  
314 administrative decision application of Dale Harrington to allow a shed to be cited within a  
315 wetland at 14 Wiggin Way, because subject to Board deliberations, the Zoning Board upholds  
316 the Building Inspector's/Code Enforcement Officers' determination that the shed is in violation  
317 of Section 11.3.2, and 5.14, of the Zoning Ordinance. Ms. Cushman seconds the motion and all  
318 in favor. Denial passes 4 to 0.**

319  
320 Part 2 of Case #680: Variance from sections 5.14 and 11.3.2 of the Stratham Zoning Ordinance to  
321 allow for a small shed to be placed on very poorly drained wetlands where it is not allowed.

322  
323 Mr. Hilson presented the application. He would like to bring forward all the comments made by him  
324 and the public so that they don't need to be repeated. The Board agreed. The variance procedure is a  
325 relief valve from an overly exacting application of a zoning ordinance to make sure that substantial  
326 justice is done. He stated that Mr. Harrington is trying to do what is right, he is a local guy raising his  
327 family here and he owns a business in town. He's not a developer who acted first, and now is asking  
328 for permission. This is a very narrow circumstance where the ordinance has changed and now he needs  
329 relief. Mr. Hilson presented each of the criteria.

330  
331 *Criteria 1: Contrary to Public Interest*

332 Mr. Hilson stated this project is not contrary to the public interest. There is a heavy emphasis on  
333 agricultural uses in the Master Plan. One concern that is articulated in the Master Plan is that costs that  
334 impact agricultural use disproportionate to their income level can include property taxes, permit fees  
335 and building code requirements. He continued reading excerpts from the Master Plan including that  
336 regulating construction activities for agricultural uses, for example, was discussed at length during the  
337 engagement process and anecdotal accounts suggest that some permit review processes imposed on  
338 agriculture uses were more arduous and costly than they needed to be. Additionally, some of the

339 standards for the permit process used for more conventional construction, residential homes, or  
340 commercial uses may not be practical for some of the improvements more typical to farm operations.  
341 Mr. Hilson stated those barriers to entry are what we're doing right now. Mr. Harrington is trying to  
342 do something that the residents of Stratham want. Mr. Hilson believes this application is consistent  
343 with the public interest.

344

345 *Criteria 2: Spirit of the Ordinance*

346 Mr. Hilson stated that Spirit of the Ordinance is adhered to in connection with a variance for this  
347 particular narrow use. He reiterated that piers, catwalks and impervious surfaces would ordinarily be  
348 allowed if this wasn't a shed but was a catwalk. He believes that the purpose of the Wetland's  
349 Conservation Ordinance aligns with Mr. Harrington's use. He stated there will be no contamination by  
350 sewage and no dredging or filling of wetlands associated with the use. He notes that section 11.3.2  
351 discusses agricultural uses in the Wetlands Conservation District overlay and in the  
352 Residential/Agricultural District, therefore the spirit of the ordinance is observed by this. Mr. Hilson  
353 believes the proposed use can be located in this resource area without any significant impact.

354

355 *Criteria 3: Substantial Justice*

356 Mr. Hilson believes substantial justice is done because the structure is so small that it doesn't need a  
357 conventional building permit. He stated that people are presumed to know the law, but that Mr.  
358 Harrington invested a considerable amount of money, into a project that he thought was lawful. He  
359 believes this is a de minimis or non-existent impact on the resource area. He asked the Board to apply  
360 common sense to the 6-foot by 6-foot shed and values are not going to be diminished. These things,  
361 under normal circumstances, can be erected without a permit. There's not going to be any impact  
362 associated with this effect. Mr. Hilson believes the shed will not be visible next year once the  
363 vegetation grows up.

364

365 *Criteria 4: Surrounding Property Values*

366 Mr. Hilson stated this was previously discussed and added that the project meets the purposes in the  
367 Wetland's Ordinance. He stated the project is not impounding water and there is no dredge and fill  
368 associated with it, so there is no fair and substantial relationship to the strict application of the zoning  
369 ordinance here, especially where agricultural uses are allowed the Wetlands Conservation District and  
370 Residential/Agricultural District. He believes that state law preempts this zoning ordinance, and stated  
371 it's questionable whether this has any substantial relationship to the zoning ordinance, if the zoning  
372 ordinance doesn't apply to this use. Mr. Hilson pointed to a map of the lot and described the existing  
373 uses and believes that the majority of the lot is unusable, and that Mr. Harrington has alighted on the  
374 one use which can be done without dredging and filling.

375

376 *Criteria 5: Unnecessary Hardship*

377 Mr. Hilson stated that as a society we want beneficial and economic use to our real estate, and the area  
378 to the north and west of that lot can't really be used for anything except for what Mr. Harrington is  
379 using it for. He believes that unnecessary hardship exists here, certainly sufficient to justify a variance  
380 for such a minimal use. He encourages the Board to grant the variance. Regarding setting precedence,  
381 this variance is very particular on the facts that are in front of the Board. It is a very small agricultural  
382 use and Mr. Hilson does not believe the Board will be leveraged in the future.

383

384 Ms. Jensen asked the Board if the variance and the use is approved, then can Mr. Harrington transfer  
385 the operation to another person. Mr. MacMillan replied that this variance would be particular to the  
386 stated property. Ms. Jensen stated that Mr. Harrington isn't the property owner. Ms. Cushman replied  
387 that they can add restrictions.

388 Ms. Cushman asked about a picture of the shed and questioned the blue device inside. Mr. Harrington  
389 replied that it is a releaser to keep the pressure on the tubes and allows the sap to come out. Ms.  
390 Cushman asked if it's powered by electricity. Mr. Harrington replied yes. Ms. Cushman asked what  
391 the black device is. Mr. Harrington replied it is a trash bag along with a drill. Ms. Cushman asked if  
392 the variance was granted can the Board limit what is allowed to be stored in the shed and she asked  
393 Mr. Harrington what equipment he needs in the shed. Mr. Harrington replied that he needs the releaser,  
394 a vacuum pump, and an electric heater. Mr. Hilson added that there is also a collection tank but that  
395 will be external. Mr. Eastwood asked how big the tank is and exactly where the collection tank will be  
396 located. Mr. Harrington replied that the tank is 900 gallons and will be put on 4x4x4 cinder blocks.  
397

398 Mr. Hilson addressed Ms. Jensen's earlier question by replying that because Mr. Harrington doesn't  
399 own the property, he is operating with approval from the owner, and at any time, they can ask him to  
400 leave. Ms. Jensen asked about the letter from DES and Mr. Hilson stated that tonight was the first time  
401 he has seen the letter and it's not a cease-and-desist order, it's a letter asking them to address what  
402 DES needs. Ms. Jensen replied that the letter states that prior to excavating, etc., you need to have the  
403 appropriate permit from DES to work in the wetland and that the letter is addressed to the Spencers  
404 even though they don't own the operation. She added that new landowners in the future may not permit  
405 it and there's an opportunity for a lot of conflicts. Mr. Hilson replied that the variance runs with the  
406 land, but this is a licensed situation. He would have advised his client to enter into a lease, but he was  
407 not involved until now. He added that this is going to be confined to the collection of maple sap and  
408 his client is bound by the representations made at this meeting.  
409

410 Ms. Cushman asked for confirmation that this use is just collection and not manufacturing syrup. Mr.  
411 Harrington confirmed. Ms. Cushman asked if a permit is needed from DES. Mr. Dinsmore replied yes.  
412

413 Mr. Eastwood stated that since the tank is larger than 500 gallons that would fit the definition of a  
414 structure. Mr. Hilson replied that it is only if the Board determines it is affixed to a location or attached  
415 to something with a fixed location. Mr. Harrington stated that the tank is going to be placed to the right  
416 of the shed. Ms. Cushman asked where the tank will be in relation to the road and asked if the shed  
417 faces toward the road. Mr. Harrington replied the tank will be on the right of the shed and the door  
418 faces the road. Mr. Eastwood showed a picture that he took the day of the meeting, and he stated that  
419 it is visible from the road and when the leaves fall it will be even more visible from the road. Ms.  
420 Cushman added that the tank will be visible as well. Mr. Harrington replied that he is willing to do  
421 whatever to screen it. Ms. Cushman asked Mr. Dinsmore if he knew about the tank, and he replied that  
422 he wasn't aware of the tank. Mr. Hilson replied to Mr. Dinsmore's statement that the tank was  
423 mentioned in all of the files that were submitted. Mr. Dinsmore apologizes for this oversight. Ms.  
424 Cushman asked if it is appropriate for the ZBA to grant a variance before they receive a permit from  
425 DES. Mr. Dinsmore replied that he does not believe the ZBA can hinge an approval on another state  
426 mandate. Ms. Cushman asks for confirmation that if the ZBA grants the variance, a DES permit is still  
427 required and the ZBA does not need confirmation of approval from DES prior to issuing the variance.  
428 Mr. Dinsmore confirmed.  
429

430 Mr. Eastwood asked the Board if they had any other questions. There were no additional questions.  
431

432 **Mr. MacMillan made a motion to open the public hearing. Mr. Eastwood seconded the motion.**  
433 **All voted in favor and the motion passed.**  
434

435 Stephen Roy of 14 Christy Lane spoke in opposition to the application. He stated he believes not  
436 protecting the wetland is contrary to the public interest along with protection of the watershed for the

437 water supply. This shed is located within the designated Wellhead Protection Area for Aquarion's  
438 Well #16. Mr. Roy does not agree with Mr. Hilson who stated the shed is not in the stream and  
439 commented that a wetlands delineation should be completed. He is also concerned with potential  
440 impacts to the stream from the tank if it were to leak, for example from a hunting accident.

441  
442 Drew Goddard of 1 Sanctuary Drive spoke in support of the application. Mr. Goddard does not agree  
443 with Mr. Roy and corrected Mr. Roy who referred to Mr. Harrington as a developer. He does not  
444 believe a wetland scientist is required as Mr. Harrington is not refuting that the shed is in a wetland.  
445 Mr. Goddard believes the application meets the criteria.

446  
447 Tara Spencer of 14 Wiggin Way thanked the neighbors who support the application. She addressed  
448 Mr. Roy's comments on the public interest and wished that he had discussed his opposition directly  
449 with her.

450  
451 Sean Burke of 138 Bunker Hill stated that he wanted to remind the Board what Mr. Hilson said about  
452 the Town's Master Plan and how this project is in the public's best interest.

453  
454 Erin Sparks of 14 Birnum Woods Road spoke in support of the application. She stated Mr. Harrington  
455 is a responsible guy who cares about the environment and about doing things right. She thinks the  
456 Board can come to a reasonable compromise where you restrict the operations to make sure there is  
457 no setting of unknown precedence.

458  
459 Jason Markey of 1 Donnas Lane spoke in support of the application. He lived in Hampton where his  
460 family did maple syruping on their property. He stated that it is definitely less detrimental to have a  
461 pumping area and the tubing for short and long term. It lets the foliage grow back and leaves the area  
462 pretty much undisturbed because there is minimal maintenance. For example, it might be years before  
463 needing to perform maintenance on the tubing.

464  
465 Matt Kushner of 70R Winnicutt Road spoke in support of the application. He doesn't see any public  
466 risk to having this shed in that area, knowing that there are electric motors pumping the sap. He stated  
467 that Mr. Harrington has done a great job and already cleaned up the wetland area from the dog feces.

468  
469 **Mr. MacMillan made a motion to close the public hearing. Mr. Eastwood seconded the motion.**  
470 **All voted in favor and the motion passed.**

471  
472 The Board began deliberations. Ms. Cushman asked if the Board can grant a variance to someone who  
473 doesn't own the property. Mr. Dinsmore replied that the applicant is Mr. Harrington, but the variance  
474 will be attached to the landowner and the landowner gave him permission.

475  
476 Ms. Cushman referenced section 11.1.4 of the zoning ordinance and stated that the use does not seem  
477 dangerous to her. She asked when hunting season starts. Mr. Dinsmore replied in the beginning of  
478 November. Ms. Cushman asked for confirmation that November is not sap season. Mr. Harrington  
479 confirmed that sap season is January. Ms. Cushman stated that no one should be discharging a gun in  
480 the residential neighborhood.

481  
482 Mr. MacMillan stated that he is deliberating internally the public interest criteria, but after listening to  
483 the testimony, he feels that criteria may be satisfied.

484  
485 Ms. Cushman stated that she does not think it is an inappropriate use or that it really endangers the

486 wetlands, as long proper conditions are included in the variance, for example, restricting the contents  
487 of the shed to the releaser, the vacuum pump, and the electric heat source. She has concerns with the  
488 tank and prefers screening of the tank with fencing. She would also like conditions that the DES permit  
489 be obtained and to record the variance against the deed, so it is a matter of public record.  
490

491 Mr. Jensen states that screening is a problem because if the operation expands, the Town won't be able  
492 to see it if there's a fence there. Ms. Cushman replied that can be another condition of the variance,  
493 that the operations cannot expand beyond what was agreed to today. Mr. Hilson suggested that  
494 something more natural be added for screening than a fence that could restrict the flow of water. Mr.  
495 MacMillan stated that he used to drive by a sugar operation on his way to work every morning, and  
496 the tubes and barrels were visible and he thought it was kind of cool. He doesn't think it needs to be  
497 screened. Ms. Jenson agreed that it does not need to be screened. Mr. Macmillan added that screening  
498 will create more complexity to the project. He thinks the area will be revegetated quickly. He feels  
499 really strongly about not requiring screening but agrees with the other suggested conditions.  
500

501 Regarding the deed recording, Ms. Cushman stated that she feels uncomfortable that the owner of the  
502 property does not own the equipment. Mr. Hilson responded that he's not sure of the concern with  
503 that. He stated that the Board is giving the property owner and Mr. Harrington a dispensation. At some  
504 point the use will stop and be abandoned. He suspects there is a town ordinance concerning how long  
505 a use or a non-conforming use needs to stop before it's considered abandoned. If you record something  
506 at the Registry of Deeds, you may be allowing the activity to restart. Ms. Cushman replied that  
507 variances run with the land and are forever. Mr. Dinsmore added that by granting a variance, the Board  
508 is taking a line and scratching out that portion of the ordinance that is restricting the applicant. If there  
509 is concern with opening doors, then you provide conditions on the approval to make it very specific.  
510

511 Ms. Cushman asked if a condition can be added that there is no expansion to the use. Mr. Eastwood  
512 replied yes. Mr. Macmillan suggested that they limit the shed to a size not exceed 6 feet by 6 feet and  
513 a 4-foot by 4-foot tank. Mr. Dinsmore replied, the variance is specific to what the applicant wants to  
514 place in that area. If the Board is not satisfied, then something additional for safety or for whatever  
515 reason can be added. Mr. Eastwood asked if the information they provided is already a condition. Mr.  
516 Dinsmore replied that is the way he sees it. Mr. MacMillan also replied yes.  
517

518 Mr. Dinsmore suggested that the Board deliberate each criteria individually.  
519

520 Mr. MacMillan stated that all criteria must be met in order to approve the variance.  
521

522 *Criteria 1: The variance will not be contrary to the public interest.*  
523

524 Ms. Jensen commented that she disagrees with the application where it says that the wetland doesn't  
525 have a job to do. She believes wetlands absorb stormwater, provide habitat, and maintain the rural  
526 characteristic of our community, which is also part of the Master Plan. Ms. Cushman asked Ms. Jensen  
527 if she feels that it will impede the job of the wetlands. Ms. Jensen replied that she agrees that 36 square  
528 feet is not a lot for a shed. There's going to be some traipsing and if there is another 23 inches of rain  
529 next summer, like last summer, there could be some problems there, especially if the tank isn't filled.  
530 She noted it is immediately adjacent to the culvert and she believes the public interest is being served  
531 by the wetlands not being impacted.  
532

533 Mr. MacMillan agreed but stated that he was persuaded that the property owner has a right to sugar  
534 the property, collect the sap, and he thinks that this is probably the least impactful way of doing that.

535 He thinks that as far as minimizing the use of land and providing the landowner relief so that they can  
536 use their land, he is satisfied that this is the least impactful way, and he thinks it satisfies the first  
537 criteria for public interest.

538  
539 *Criteria 2: The spirit of the ordinance is observed.*

540  
541 Ms. Cushman stated that this operation can be conducted safely, and they have demonstrated that this  
542 will have no impact on water quality. Mr. MacMillan agreed.

543  
544 *Criteria 3: Substantial justice is done.*

545  
546 Mr. MacMillan stated that the criteria has been met for this and if they deny the application, it will  
547 deprive the property owner of the use of their property.

548  
549 *Criteria 4: The values of surrounding properties are not diminished.*

550  
551 Mr. Eastwood stated that he didn't hear any concerns from the public about property values.

552  
553 *Criteria 5: Literal enforcement of the provisions of the ordinance would result in an unnecessary  
554 hardship.*

555  
556 Ms. Cushman stated that if the Board denies the variance, then this gentleman can take the shed and  
557 the tank, and he can keep the tubes in place, and walk through the wetlands with buckets. She believes  
558 that would have more of an environmental impact than what is proposed. Ms. Jensen agreed.

559  
560 Mr. MacMillan read aloud the subparagraphs of this criteria and stated that he believes the application  
561 meets Criteria 5.

562  
563 Mr. Macmillan reviewed the proposed conditions with the Board. The first is that the applicant must  
564 receive equal approval for the shed within the wetlands from NH DES pursuant to RSA 482-A. The  
565 second condition that the variance will become invalid if not executed within two years of the Notice  
566 of Decision. Ms. Cushman asked for a condition that the collection of sap should be its only use, and  
567 another condition regarding the contents within the shed. Mr. MacMillan added that the shed should  
568 be limited to 6 feet by 6 feet and should only contain an electric heater, electric releaser, and electric  
569 pump, and the proposed approximately 900-gallon tank. The Board agreed to not include conditions  
570 for recording the variance and requiring screening.

571  
572 Ms. Jensen asked if the Town's attorney needs to review the conditions. She is concerned with the  
573 homeowner vs. business owner complication. Mr. MacMillan replied that he is not concerned with  
574 that as the business owner submitted the application and the Board has the authority to make the  
575 decisions. Ms. Cushman is concerned with the ownership complication. Mr. Hilson replied that the  
576 project is unusual to the prejudice of Mr. Harrington, as the landowner can revoke approval at any  
577 time. Mr. Dinsmore added if the Board approves the variance, all of the application details are attached  
578 along with the conditions of approval. Future property owners will have the same requirements  
579 attached to that variance.

580  
581 Mr. Eastwood asked what happens if the collection of sap is abandoned. Mr. Dinsmore replied that  
582 there are specific items attached to the variance application, so if operations change drastically in the  
583 future, for example, there is some other weird technology that doesn't line up with those electric

584 components then they would possibly need to return to the Board.  
585

586 **Mr. MacMillan made a motion to grant the variance from both Section 5.14 and Section 11.3.2,**  
587 **consistent with the material submitted to allow the existing shed to remain in use in the wetlands**  
588 **for its intended agricultural use as the Zoning Board of Adjustment has determined that the**  
589 **application meets all the variance criteria subject to the Board's deliberations and subject to the**  
590 **following binding conditions:**

591 **1.) That the applicant must receive equal approval for this shed within the wetlands from**  
592 **NHDES pursuant to RSA 482-A.**

593 **2.) That the variance will become invalid if not executed within two years of the Notice of**  
594 **Decision.**

595 **3.) That the six-foot by six-foot shed and approximately 900-gallon tank, may only include the**  
596 **contents of the electric heater, releaser, and pump.**

597 **4.) That the use to be limited specifically to the collection of sap.**

598  
599 **Ms. Cushman seconded the motion. All voted in favor and the motion passed 4 to 0.**

600  
601 **Mr. Eastwood stated that the meeting was adjourned at 9:36 p.m.**