



**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 1st 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.
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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.

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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.

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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.

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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.

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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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Hilson stated he would like to address the public comments received. He is very impressed with the number of people who came out to support his client. He reiterated that this property is in the Residential/Agricultural zoning district and agricultural uses are allowed in the Wetlands Conservation District. Mr. Hilson does not agree with Mr. Boyd's statement that there is a stream under the shed. He stressed the agricultural use and that there are dispensations, both in Stratham's ordinance and in state law which he previously spoke about. Regarding moving the shed, it could probably be moved a 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 work.

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

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

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

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

Part 2 of Case #680: 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.

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

Criteria 1: Contrary to Public Interest

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

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

Criteria 2: Spirit of the Ordinance

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

Criteria 3: Substantial Justice

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

Criteria 4: Surrounding Property Values

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

Criteria 5: Unnecessary Hardship

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

Ms. Jensen asked the Board if the variance and the use is approved, then can Mr. Harrington transfer the operation to another person. Mr. MacMillan replied that this variance would be particular to the stated property. Ms. Jensen stated that Mr. Harrington isn't the property owner. Ms. Cushman replied 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.
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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.
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430 Mr. Eastwood asked the Board if they had any other questions. There were no additional questions.
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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Criteria 2: The spirit of the ordinance is observed.

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

Criteria 3: Substantial justice is done.

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

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

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

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

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

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

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

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

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

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

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

- 1.) That the applicant must receive equal approval for this shed within the wetlands from NHDES pursuant to RSA 482-A.**
- 2.) That the variance will become invalid if not executed within two years of the Notice of Decision.**
- 3.) That the six-foot by six-foot shed and approximately 900-gallon tank, may only include the contents of the electric heater, releaser, and pump.**
- 4.) That the use to be limited specifically to the collection of sap.**

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

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