

Variance Hearing  
Edward Herbert  
September 2, 2015

*To consider a variance request by Edward Herbert to build an accessory structure within the setback on his property at 300 Bayley Hazen Road.*

The application requires a review under the following sections of the Greensboro Zoning By-Law: 2.5 Rural Lands District; and 5.5 Variances.

**Warnings** were posted on August 17, 2015 at the Greensboro Town Hall, the Greensboro Post Office and the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to the following abutters and neighboring property owners: Peter Roudebush; Valdine Hall; Susanne P. Boyd Trust; Elsa Williams; Barr Family LLC; Sarah Gamble; Sara Fifield; Andrew and Elizabeth Brown; and Gordon Stoner. It was published in the Hardwick Gazette on Wednesday, August 19, 2015.

**Development Review Board members present:** MacNeil, Linda Romans, Nat Smith, Sean Thomson, Janet Travers, Jane Woodruff, Wayne Young and Lee Wright, alternate.

**Others present:** Edward Herbert, applicant; and Kristen Leahy, Zoning Administrator; Hu & Gail Sangree, and June Cook from the Hardwick Gazette.

**Correspondence from interested persons:**

- #1 Email from Susan Schulman
- #2 large survey map of the lower portion of the Herbert property
- #3 letter from Mr. Roudebush
- #4 request for variance paper written by Edward Herbert
- #5 supplement to the previously submitted requests for a variance by Edward Herbert

**Summary of Discussion**

Ms. Woodruff, chair, began the hearing at 7:07 PM. She noted the hearing was semi-judicial and explained the procedure for the hearing. Ms. Woodruff began the hearing by reading an email from abutters, Susan and Bill Schulman, (exhibit #1) stating that they had no objection to the proposed shed providing it was for personal and not commercial use. Then Ms. Woodruff read the letter from abutter, Peter Roudebush, (exhibit #3) stating that he did not want Mr. Herbert to clear cut any trees on his land. She then asked the clerk to swear in those who wished to speak at the hearing. After Mr. Herbert had been sworn in, Ms. Woodruff asked him if the narratives he wrote and submitted to the DRB (exhibits #4 and #5) were the truth. Mr. Herbert stated they were. Ms. Woodruff then asked Mr. Herbert to explain what he wanted to do on his land at 300 Bayley Hazen Road. Mr. Herbert began by saying that he sold some land on Caspian Lake and must remove the contents of a storage shed on that property by this fall. He wants to build a shed on his Bayley Hazen Road property in which to put the contents of the shed on his former Caspian Lake land. He hired Gary Dimick to make the curb cut and prepare the lower end of a driveway which could be extended to the top of this property. Mr. Herbert wanted the driveway begun so the shed could be placed where it would not interfere with the driveway. Mr. Dimick ran into several problems in trying to locate the driveway in a place where the grade would not be too steep, the curves would not be too tight, and it wouldn't run into too much ledge when extended to reach the top of the land. Mr. Dimick finally decided the present location of the drive would be the best place for it. Mr. Herbert looked at other locations for a shed, but they all seemed to have some problem. The location of a shed must take into consideration that trucks must be able to get to it in all seasons and must be able to park to unload on fairly level ground. Mr. Herbert first wanted to locate the shed near the road and have the driveway go behind it, but Mr. Dimick pointed out that that location was not possible because the curve in the driveway that would be required would be too tight. He wanted to hide the shed from the road behind some trees and found that was not possible either. He thought of extending the driveway to the top and placing the shed there, but he didn't have the money to extend the

drive that far.

Mr. Herbert then stated that he found the variance criteria to be extremely strict and objected to this. He referred to the statements found in the "supplement to the previously submitted requests for a variance" (exhibit #5). These statements refer to a document called VERMONT ZONING AND SUBDIVISION LAW prepared by Burak Anderson & Melloni, PLC. Ms. Woodruff stopped him there and stated that the Board bases their variance decisions solely on section 5.5 in the Greensboro Zoning By-Law, last amended and adopted by the voters at Town Meeting on March 3, 2015.

Ms. Woodruff then opened the hearing for questions from the Board. They were as follows:

1. What is the intent for this property? Mr. Herbert answered that he sees four possibilities for the property. He could build a house on the top, it could be subdivided into four lots, or he may have to sell it, but his immediate concern is to build a shed on this lot and get his things out of the shed on the land near Caspian Lake. He agreed that without this shed he feels he has no other place to put his things from the shed near Caspian Lake.
2. Are there buildable flat areas at the top of the hill? Mr. Herbert answered yes.
3. Will the proposed storage shed be for commercial use? Mr. Herbert answered no.
3. If he were to receive the variance and he built a house up on top of the hill would he move the shed? Mr. Herbert answered no. The proposed shed was going to be attractive and well-built on stone fill with landscape logs.
4. Why couldn't the items be stored in a rental or a portable shed? Mr. Herbert answered that he felt that the cost of moving the items in the shed on the Caspian Lake property would be prohibitive as would the rent at a storage facility. Mr. Herbert added that there is room at the top of the hill for a shed but the cost of putting in the driveway to the top was prohibitive. It was suggested that it seems like the driveway was done first and then he looked for a place for the shed. Mr. Herbert stated that no, the idea of a shed came first. Another suggestion was that he could build a shed in a spot that conforms to the setbacks required in the by-laws and put a short driveway to it. Mr. Herbert stated that some people suggested he put a truck or old school bus on the property to store his things but he didn't want to do that because it didn't look good.
5. Who would own the shed if Mr. Herbert didn't own a house in the suggested subdivision? Mr. Herbert stated that he thought the person who owned the land at the bottom of the lot would own the shed.

Ms. Woodruff then asked if there were any more questions or comments from the people present.

Ms. Sangree said she would like to speak. She is abutter, Sara Gamble's, mother and is acting as her representative. Ms. Sangree said that in listening to what was presented, it seems like the land has severe limitations and putting a lot of money into the construction of a driveway and engineering seemed to be a waste when all Mr. Herbert needs is a place to store his things. It seems that there are other alternatives to building a storage shed on this property; for instance there are storage units in Craftsbury. She doesn't see that needing a place to store his things constitutes a hardship. She went on to say that Mr. Herbert's ultimate plan seems to be to further develop the lot and put four building lots up there and she feels the land can't support that.

Ms. Woodruff asked Mr. Herbert if he wanted to address any concerns that have been raised.

Mr. Herbert then took the opportunity to read the final page and a half in the "supplement to previously submitted requests for a variance" (see exhibit #5).

The hearing ended at 7:55 and the Board went into deliberative session at 7:58. They came back into public session to announce their decision at 8:10.

### **Findings of Fact:**

Based on the application, exhibits, and testimony, the Development Review Board makes the following findings:

## 5.5 Variances

### A) Variance Criteria

1. *There are unique physical circumstances or conditions of lot size or shape, narrowness or shallowness, or other physical conditions peculiar to the property and that unnecessary hardship is due to these conditions and not to the circumstances created by the provisions of these regulations in the district in which the property is located.*

In the Board's opinion there are other conforming sites on the 44 acres in this lot where a shed could be located. Variance criteria #1 states that to find a hardship there must be unique circumstances created by physical conditions of the lot. It is the Board's opinion that the placement of the driveway necessitated the placement of the shed in a non-conforming area and that is not a unique circumstance of the size, shape or other physical conditions of the lot and therefore can't be used to determine that a hardship exists.

Since a variance request must meet *all* criteria in 5.5 of the Greensboro By-Laws and it did not meet criteria #1, the Board did not consider the criteria in # 2 - 5.

2. *Because of these unique circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Bylaws and authorization of a variance is necessary to enable the reasonable development of the property.*

3. *The unnecessary hardship has not been created by the applicant.*

4. *If authorized, the variance will not:*

- a) alter the character of the neighborhood or district*
- b) impair the use or development of adjacent property*
- c) reduce access to renewable energy resources*
- d) be detrimental to the public welfare*

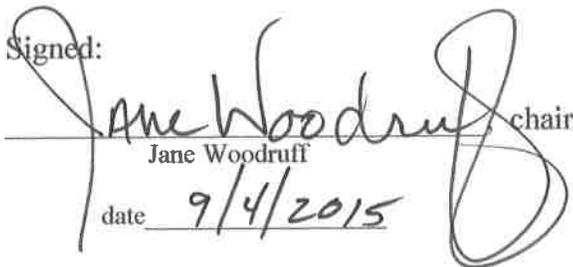
5. *The variance represents the minimum that will afford relief and the least deviation possible from the bylaws and town plan.*

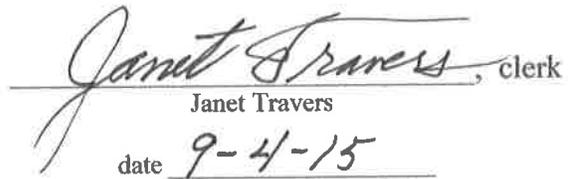
### Decision and Conditions

Based upon these findings, the Development Review Board voted unanimously (7 – 0) to deny the variance application by Mr. Herbert.

In the Board's opinion there are other conforming sites on the 44 acres in this lot where a shed could be located. Variance criteria #1 states that to find a hardship there must be unique circumstances created by physical conditions of the lot and that was not met. It is the Board's opinion that the placement of the driveway necessitated the placement of the shed in a non-conforming area and that is not a unique circumstance of the size, shape or other physical conditions of the land and therefore can't be used to determine that a hardship exists.

Signed:

  
Jane Woodruff, chair  
date 9/4/2015

  
Janet Travers, clerk  
date 9-4-15

### NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.