

**APPROVED**  
**New Castle Board of Adjustment**  
**July 18, 2013**

**Public Hearing Re: Penny Wright on behalf of Barbara Newall, 118 Wentworth Rd., Map 13, Lot 12.**

**Public Hearing Re: Jeffrey & Barbara Hughes, 47 Oliver St., Map 16, Lot 27.**

**BOARD MEMBERS PRESENT:** Russell Cox; Mark Gardner; Ned Robinson; Will Smith; Susan Stetson

**BOARD MEMBERS ABSENT:** Todd Baker; Donald Moore

Chairman Robinson called the meeting to order at 7:00 p.m. He announced that the voting members for this public hearing would be Cox; Gardner; Smith; Stetson and the Chair.

**Public Hearing Re: Penny Wright, 32 Route 156, Nottingham, N.H. on Behalf of Barbara Newall, 118 Wentworth Rd., Map 13, Lot 12:**

**GUESTS:** Donald & Penny Wright, on behalf of Barbara Newall; Barbara Newall; Michael Borislow, applicant.

The Chair announced this was a public hearing regarding Penny Wright, 32 Route 156, Nottingham, N.H. 03290, on behalf of Barbara Newall, Irrevocable Family Trust, 118 Wentworth Rd., Map 13, Lot 12. The public hearing has been properly advertised, abutters have been notified and all fees paid.

Penny Wright, on behalf of Barbara Newall, said they would like to replace a failed septic system with an Aeration Pretreatment Septic System. The new septic system would be for the existing three-bedroom house. The new pretreatment septic system will be farther from the wetlands. The tank will be watertight, ballasted and tied down, with gasketed concrete risers with screw down cast iron covers to grade, to prevent leakage and/or infiltration in case of flood. Effluent will be pretreated in tank before being pumped to the dispersal area. There is no need for treatment in field. Lot size and configuration, along with soils data allows no other suitable area.

Erosion control will be used to protect wetland in back yard.

Only rubber track landscape excavator will need to access backyard between wetland and garage. The landscape excavator is needed to dig hole for new tank, and to decommission existing septic tank and field. Crane will be used to place new tank, to avoid impact on wetland or neighbors.

Wright said it will be a 200 s.f. field instead of a 750 s.f. field for this area. The post is only 48.2 ft. from the wetland area instead of the required 50 ft.; the field is 71.5 ft. away from the wetland area instead of the required 75 ft.

From the wetlands across the street, which is a Class A, they will be 98.25 ft. away from the wetlands, instead of the required 100 ft. setback line. The whole dispersal area is within the setback and the tank is just inside the 50 ft. setback.

Wright pointed out that they meet most of the State regulations. The hardship that is incurred by not allowing the septic is that the house is inhabitable without a septic system that works.

Wright addressed the five criteria:

1. *The variance will not be contrary to the public interest, (Attachment A.)*
2. *The spirit of the ordinance is observed, (Attachment A.)*
3. *Substantial justice is done, (Attachment A.)*
4. *The values of surrounding properties are not diminished, (Attachment A.)*
5. *Unnecessary Hardship, (Attachment A.)*

The Chair asked for the Board's comments.

Smith assumes the house is not on city sewer. Wright stated that this is correct.

Cox noted that the city sewer stops at the Coast Guard Station.

The Chair said the applicant would be running into problems with NHDOT if Rte 1B were torn up.

Cox said the septic system is a perfectly acceptable process as there is not much of an alternative. The plumbing coming out at the rear of the property almost forces you to put the facility to the rear to the property. You cannot put it anywhere there without having buffer problems. He feels the house has the advantage of having wetlands in all directions. He asked Wright if the septic system was for a three bedroom house.

Wright replied the septic system is for the three bedroom house and could also accommodate a four bedroom house. The Building Inspector agreed this is a very simple design and there are not many working parts where things can go wrong. If there is a power failure and you have a generator, the system would work off the generator.

Chairman Robinson asked if this system would need to be cleaned out periodically?

Wright replied the Clean Solution Septic System comes with a two-year maintenance contract.

Stetson questioned the maintenance contract.

Wright replied the septic system comes annually but the aeration chamber is inspected every two years.

Gardner questioned the State approval.

Wright replied they need a ZBA approval first before the State approval.

The Chair asked for public comments. There were none. He closed the public portion of the hearing.

The Board's Deliberations followed.

Smith said, in his opinion, this seemed like a decent system. There is a hardship of the lot and the distances are close to requirements.

Gardner has no problem with the septic system.

Stetson is in favor of the new septic system.

Cox is in favor of replacing the septic system.

**Smith moves for the Board of Adjustment to approve the new septic system for the applicant, as presented this evening, subject to the following: 1) N.H. State approval; 2) subject to Conservation Commission approval; and 3) subject to Planning Board approval.**

**Cox seconded the motion.**

**Cox approves the proposed septic system.**

**Smith approves the proposed septic system.**

**Stetson approved the proposed septic system.**

**Gardner approves the proposed septic system.**

**Chairman Robinson approves the proposed septic system.**

**Unanimously Approved.**

The Chair closed the public hearing for Penny Wright on behalf of Barbara Newall.

**Public Hearing Re: Jeffrey & Barbara Hughes, 47 Oliver St., Map 16, Lot 27:**

**GUESTS:** Jeff Hughes, applicant; Brendan McNamara, Designer.

The Chair told the applicant there only four voting members for this public hearing as Board member Will Smith, abutter, has to recuse himself as a voting member. The applicant is entitled to have a full Board. Jeffrey Hughes, applicant, said he would go ahead with the public hearing with four voting members. The four voting members are Cox, Gardner, Stetson and the Chair.

Chairman Robinson announced this was a public hearing for Jeffrey and Barbara Hughes, 47 Oliver St., Map 16, Lot 27. The applicants seek a variance to the provisions of Article IV, Section 4.2 (Table 1), and Article VII, Section 7.5.1, of the New Castle Zoning Ordinance in order to remodel and enlarge a non-conforming building. The Maximum Building Area permitted by the Ordinance is 2,218 square feet; the existing structure is approximately 2,418 square feet. Applicants seek to increase the Building Area by 18 square feet, a portion of which will be a vertical incursion within the side yard setback. As noted by the applicants, the property was fully developed before the imposition of the current zoning requirements. The public hearing was properly advertised, abutters have been notified and all fees paid.

Brendon McNamara, Designer, addressed his proposal, (See Attachment B.)

He explained that the property was fully developed before the imposition of the current zoning requirements. The extra area is to provide sufficient size to bathroom and closet for ageing owners. The current house is vinyl sided and the intention is to restore it to its original appearance.

The intention to restore the house to a more original look will be achieved with new windows, siding and trim to match the appearance of the original materials.

Also, to alter the pitch of the rear family room addition to match that of the original house. The existing rear chimney and fireplace (not original) would be demolished.

They are proposing to increase the size of the second floor master suite to make the bathroom and closet facilities more accessible. To achieve this, the existing shed dormer needs to be extended by 9'. This increases the Building Area by 18 sf and 8 sf of this expansion is within the side yard setback. However, this expansion is within the first floor footprint of the existing house.

The Maximum Building Area for this lot is 2,218 sf. The Existing Building Area is 2,418 sf. The existing structure does not meet the front and side yard setback requirements.

McNamara provided photographs, (Attachment C) and then referred to the area calculations, (Attachment D.) and explained the existing shed relocation. McNamara pointed out that the existing shed is to be relocated as shown on the Proposed Site Plan. This will involve the "lifting" and putting aside the existing wood structure. It's foundation will be removed, and a new one installed in the location shown. The existing wood structure will be changed to accommodate a larger door to the road allowing winter, small vehicle, storage.

McNamara addressed the five criteria.

1. *Public Interest, (Attachment E, Pg 1.)*
2. *Spirit of the Ordinance, (Attachment E, Pg. 1.)*
3. *Substantial Justice, (Attachment E, Pg. 1.)*
4. *Value of Surrounding Properties will not be Diminished, (Attach. E, Pg.1.)*
5. *Literal Enforcement would result in Unnecessary Hardship, (Attach.E, Pg. 1&2.)*

Cox questioned the expansion of the second floor and from the drawings, it appears that the applicant is expanding a closet. Was that correct?

McNamara replied they are expanding a closet. That allows them to expand a bathroom next to it. Essentially, that allows them to expand the existing bathroom that is located in that area.

Cox assumes that the existing bathroom is not shown on the plans.

McNamara replied it is not. The existing bathroom is generally in that location. He pointed out that an 8 ft. wide dormer is coming out and they plan on expanding the dormer to the right and they will gain only 1 ½ feet.

Cox is trying to understand the hardship of the expansion beyond the existing square footage of the building. It is hard to recognize the expansion of a closet as a hardship. The applicant replied that he is doing more than that, they are rebuilding a bathroom.

McNamara said the existing closet is within the existing footprint.

Chairman Robinson stated that it appears the existing toilet has not much space.

Cox said the hardship is the closet change that is necessary in order to make the bathroom livable.

Cox indicated two issues. 1) expanding the second floor; and 2) relocating the shed.

McNamara was unsure whether the moving of the shed was cause for a variance although it is under the ZBA's purview and it is part of the proposal.

Cox said the moving of the shed is still in the setback area. The applicant could demolish the shed and not violate the setback.

McNamara noted that Don Graves told him that under the New Castle Ordinance as long as the shed is moved away from the property lines, thereby becoming less non-conforming, it does not require a variance.

Discussion followed among the Board regarding the movement of the shed.

Cox indicated that the shed, where it exists on the property line, is a real hardship from the standpoint of maintenance because you cannot maintain two of the sides without encroaching the abutters.

McNamara said, in terms of the shed movement, by moving the shed it allows access to a car and it moves the shed out of the property line and improves the rear view of the neighbor.

Cox asked for clarification regarding the fence.

McNamara replied the fence is on 47 Oliver St.

Cox said the front left part of the fence is on the neighbor's property. McNamara agreed.

Jeff Hughes pointed out that the fence was added after they moved in and it was done because of the slope on their property, the abutting property and the threat of a hill. It was not until they had a survey done that they realized that it was not all on their property.

Cox pointed out that the applicant did not request a variance for the movement of the shed.

McNamara agreed because they were advised by Don Graves that it was not necessary. He said that by the ZBA approving the application, that approves everything.

The Chair agrees that by approving the applicant's proposal, then the Board is approving what the applicant is requesting to do.

The Chair noted that Moore's position is that by moving the shed and getting it away from the property line, your making it less nonconforming.

Cox asked for clarification on what is the required setback for sheds off the property line.

Chairman Robinson replied what the Town voted on at the recent Town Meeting is structures of 80 sf or less, a 10 ft. setback would be applicable. It is 10 ft. for any other structures.

Stetson said that, presently, it is a shed but you bring it forward and put a car in it, then it becomes a garage.

Gardner referred to Page Z-7 #70 – Structure: – *“A combination of material to form a construction greater than 18” high, with or without foundation, that is safe and stable; including among others, buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, wharves, sheds, shelters, and display signs but excluding retaining walls, fences, and other customary landscaping elements. The term structure shall be construed as if followed by the words “or part thereof.”*

Cox has a problem with Don Graves, Building Inspector, saying a variance is not needed to remove a shed.

Chairman Robinson referred to Section 7.5.1 – *“No addition, change or expansion to any nonconforming building, structure, lot or use which causes the building, structure, lot or use to become more nonconforming shall be allowed.”*

Hughes said their intention is to rebuild the shed.

Cox does not see any reason given why the shed should not be conforming to the setbacks.

Gardner has a concern with the wording “demolish” and “rebuild”. Is it being demolished or is it moved? If it is demolished and rebuilt, then it is subject to Section 7.5.1 and 7.5.2.

McNamara replied it is being moved and a new one will be rebuilt.

Gardner replied it is subject to Section 7.5.1 and 7.5.2 that states once you take a structure down, you have to make it conform.

Cox said it is a bad precedence to set. There is no hardship reason why it cannot conform.

Gardner said the ZBA can approve the proposal here tonight and the Board can specifically exclude any approval on the shed.

The Chair said there is a Chair’s meeting of all the Land Use Boards next Wednesday and Don Graves is planning to be present at this meeting.

Cox said there is no hardship involved in moving a shed. The Board can grant a variance, as requested, on the house only.

McNamara said if the Board feels that a variance is needed for the shed, we would be coming back after the variance is advertised.

Cox suggested the Board consider the variance, as requested, for the house only.

Chairman Robinson asked if Board member Smith, abutter, had any concerns with the proposal.

Smith has no problems with the proposal on the 18 sf of additional space.

The Chair closed the public portion of the hearing.

Deliberations by the Board followed.

Cox accepts the proposal for the house, as presented, specifically excluding any approval or disapproval of the shed.

Gardner agreed with Cox. He feels it is a reasonable proposal and it is a reasonable expansion of a very small nonconforming space. In his opinion, it meets the criteria of hardship.

Chairman Robinson approves the modifications of the house.

**Cox moves for the Board of Adjustment to accept the proposal for the house, as presented, specifically excluding any approval or disapproval of the shed. He approves the modifications, as presented. Gardner seconded the motion.**

**Gardner is in favor of the motion, as presented.**

**Chairman Robinson approves the motion, as presented.**

**Stetson feels it is a very nice proposal and it smoothes out the back. It does not bulk up the property. She is not convinced there is a hardship.**

**Cox said it is a diminimus addition that improves the interior of the house substantially and a hardship if you cannot improve the bathroom without a minor extension with no effect on the street scene. He said it is a close call on the hardship but it is certainly a diminimus modification.**

**Stetson is in favor of the motion to approve, as presented.**

**Approved 4 - 0**

Chairman Robinson is going to speak with the Building Inspector regarding this issue. He also has the question as to whether they can discuss something that has not been raised by the Building Inspector.

Chairman Robinson closed the public hearing for Jeffrey & Barbara Hughes.

**Review of ZBA Minutes of May 30, 2013:**

**Stetson moved for the Board to accept the ZBA minutes of May 30, 2013, as amended. The Chair seconded the motion. Approved.**

**Adjournment:**

**Cox moved to adjourn the meeting. Smith seconded the motion. Meeting adjourned at 8:30 p.m.**

Respectfully Submitted,  
Anita Colby, Recording Secretary

Attachment to follow on following page

Attachment A: Proposal re: Barbara Newall

Attachment B : Proposal re: the Jeffrey & Barbara Hughes property

Attachment C: Photographs submitted re: Hughes property

Attachment D: Area Calculations for 47 Oliver St.

Attachment E: Addressing the Five Criteria for the Hughes property