

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
8 & 12 Seminole Avenue
TOWN OFFICE Upstairs Meeting Room
NEW HAMPTON, NH 03256**

October 14, 2016

MEMBERS PRESENT Mr. Tierney, Ms. Karnis, Mrs. Erler, Mr. Frazier, Mr. Smith, and Mr. Orvis (5:12 pm).

OTHERS PRESENT Administrative Assistant Mrs. Vose, Attorney Spector-Morgan

CALL TO ORDER Mr. Tierney called the meeting to order at 5:00 PM.

Though Mr. Orvis was expected at this meeting, Mr. Tierney appointed Mr. Smith to vote in place of Mr. Orvis as Mr. Smith had attended all meetings relative to the Marsh application.

SITE VISIT
8 & 12 Seminole Ave.

David Marsh was present.

Mr. Marsh reviewed orange lines painted on the ground to reflect the current and proposed side property lines at Seminole Ave. He showed orange ribbons marking the proposed property line from the road to the lake, taking an angle towards #8 Seminole Ave. from behind that property's garage. He said when a new septic tank was proposed the owner at the time for #8 said the property line was where there was presently a row of trees between #8 and #12 Seminole Ave. Mr. Marsh indicated white paint on the ground showing the estimated location of the pump tank and line that leads from #12, across Seminole Ave., to #12's property across the road where the leach field is located. He said this was one of the reasons they were asking to move the property line over, as the tank and line is on the property for #8. He said the system was approved through the state. Mr. Marsh said relative to concerns that the structure at #12 could be expanded towards the north, it could not happen as it would mean moving the tank and line which would be expensive.

Mr. Tierney asked Mr. Marsh why he didn't propose the new property line to go just around the tank and line, so it would be on the property it serves. He said the area between the tree line, that was thought to be the property line, and the garage on #8, is where he's always parked his vehicles. His intention to create more yard in between the roadside of the house (#12) and the road, which

includes the area in front of the garage, and avoid parking in front of the garage.

Ms. Karnis confirmed with Mr. Marsh that when the septic system was redone it was believed the property line was where the row of trees were. She asked when the survey work was done that caused the discovery of the tank and line to be straddling the property line between the two properties. He said several places have sold and each time it seemed a survey would be done, with different surveyors over the years. He said now that he knows about it, he wants to fix it. Ms. Karnis asked if he knew about the surveys at the time they were done and Mr. Marsh said he knew of the results as they are close neighbors who are part of an association. Atty. Spector-Morgan asked why someone had surveyed his property and Mr. Marsh said because they had to begin at Waukegan Road and work their way south.

Mr. Tierney pointed out that the approval for construction, which was approved by the state for the new septic system on #12, had the tank and line in a location between the house and lake and fully contained within that property. Mr. Marsh said they didn't install it that way and Mr. Tierney asked why that happened. Mr. Marsh said he didn't know why but Mr. Ames (septic designer) came back and proposed this other location. He said prior to the new system it was a cesspool, which was replaced with a tank (noted as "existing tank" on the Approval for Construction plan) that is near the road. Then Ames Assoc. added the pump tank, which was run to the new leach field across the road. Ms. Karnis asked Mr. Marsh if he consulted with anyone relative to the exact location of the pump chamber and line which he had painted on the ground, and he said he did not but based on his knowledge, felt it was close. Mrs. Erler asked if #8 and #12 used the leach fields across the road and Mr. Marsh said #12 does and he gave permission to #14 Seminole Ave. to put a leach field in the same area, granting an easement.

Mr. Orvis arrived. Ms. Karnis asked Mr. Marsh to show the board the property across the road where the leach fields are located. The board reviewed this area, which was up on a slope just south of a structure, showing the leach field areas for each lot. Mr. Marsh showed the board (at the road) where the northern side property line was and southern side property line proposed for #8 so they'd understand the frontage along the road if the variance was approved. Mr. Marsh showed the board where the present septic system was located on #8's property.

Mr. Marsh said he could agree to a condition that the house at #12

not be expanded toward the north.

Ms. Karnis pointed out that the proposed property line, which appears to be a distance north from where the side property was thought to be (the tree line), angles further towards #8 instead of going straight towards the lake. She asked how this related to the issue of parking over the years, and the location of septic tank, pump chamber, and line. Mr. Marsh said it doesn't, but it was what they would like to do. He advised that the reason they've done it this way is to more equitably distribute the waterfront for both lots that they own. He said they are not negatively affecting any other lots along the road. He said the proposed lot line would make it impossible for the house on #8 to expand towards the south, which it could if the lot line remained where it is currently. Ms. Karnis pointed out that #12 could potentially expand but Mr. Marsh said he would agree to the condition that it cannot be expanded to the north. Mr. Orvis asked how many bedrooms each dwelling had and Mr. Marsh advised that one has two and one has three, with one bedroom being used as an office. Mrs. Erler asked if the lake frontage would become the same and Mr. Marsh said it would be almost the same. He said it would cut the lake frontage of #8 almost in half making it more equitable for the two lots.

Relative to the water supply Mr. Marsh said both lots take water from the lake with the possibility of putting wells near the lake.

RECESS

At 5:24 pm the board recessed to travel to the Town Office meeting room.

RECONVENE

Mr. Tierney reconvened the meeting at 5:45 pm.

He noted that all members were present, as was Attorney Spector-Morgan, Mrs. Vose and Mr. Marsh. Wes Hays was also present.

PUBLIC HEARING

David & Debra Marsh, 8 & 12 Seminole Avenue, Tax Map U-11, Lot 7 & 9, for two Variances, Article IV, Section A.4.iii, and Article IV, Section I.3, of the New Hampton Zoning Ordinance

Mr. Tierney advised that the applicant, David & Debra Marsh, has requested a Public Hearing in accordance with RSA 676:7, for two Variances. The first Variance is under Article IV, Section A.4.iii of the New Hampton Zoning Ordinance, which requires a 20 foot side setback. The applicant's proposal is to perform a boundary line adjustment between Tax Map U-11, Lots 7 & 9, taking .08 acres from Lot 7 and merging it with Lot 9, which will result in the garage on Lot 7 to be five feet from the side property line which is within the 20-foot setback of a property line. The second Variance is under Article IV, Section I.3 of the New Hampton Zoning Ordinance, which requires a two acre minimum lot size in the Waukegan Watershed Overlay District. The applicant's proposal of taking 0.08

acres from Lot 7 (currently 0.39 acres), adding it to Lot 9 (currently 0.92 acres), will result in Lot 7 being more non-conforming in size, at 0.3 acres, while Lot 9 will be increased to 1.0 acres.

The properties belonging to Debra Marsh Trust (Tax Map U11, Lot #7) and David Marsh Trust (Tax Map U11, Lot #9) are located at 8 & 12 Seminole Avenue, in the General Residential, Agricultural and Rural District and the Waukegan Watershed Overlay District.

Mr. Tierney asked Mr. Marsh if there was anything additional he wanted to say. He did not.

Mr. Tierney asked why the encroachment of #12's septic system onto #8's property couldn't be dealt with by granting an easement. Mr. Marsh said he thought it could, but that a lot line adjustment accomplishes several things:

1. It puts the septic system completely on #12's property without an easement;
2. The way it is laid out both properties cannot be expanded any more than what they are;
3. They are making the lake frontage more equitable.

Mr. Tierney said that the septic system on #8's property was approved based on the size of the lot. Atty. Spector-Morgan advised that it appeared the septic design was approved with a waiver by the state. Mr. Hays advised that the state wanted the use to be seasonal and a waiver given was for a year-round system, as the previous owners wanted. Mr. Hays said he knew first-hand as he did the site work and Jim Hanna installed the system.

Mr. Tierney said it was necessary for the board to know that the reduced lot size for #8 would not negatively impact the septic system on that property. He asked that Mr. Marsh provide written clarification from the NH DES that the reduced lot size would be sufficient for a septic system on #8 Seminole Ave.

Mr. Tierney made a motion, seconded by Ms. Karnis, to continue the hearing to 11/2/16 allowing Mr. Marsh time to get the requested information from NHDES.

Mr. Hays asked if there was a way to vote whether or not to grant the variances contingent upon DES saying the reduced lot size would not be an issue. Atty. Spector-Morgan advised that the board must determine whether there is a threat to the public safety, health and welfare by reducing the lot size of #8 Seminole Ave. and therefore the board needs this information before making a finding

on the variance criteria.

Mr. Marsh said the lot line will not change the land or how the existing septic system works. Mr. Tierney said it was approved based on the size of the lot as it was then. Mrs. Erler said she would want to know that if there were a failure of the existing system, could it be replaced. Atty. Spector-Morgan advised that as this would still need approval by the Planning Board for a boundary line adjustment and the state may have input on the subdivision of the lot.

Atty. Spector-Morgan said when Mr. Marsh speaks with DES he should verify whether this issue with the septic system straddling the property could be solved with an easement. Mr. Marsh said he did not want an easement. Atty. Spector-Morgan told Mr. Marsh that one criterion he must prove is whether denying this variance would be an unnecessary hardship so if an easement is sufficient there may not be a hardship.

Mr. Hays asked if some of the property on the other side of the road that currently belongs to #12 Seminole Ave. was traded for the same amount of property being taken from #8 Seminole Ave. would that be sufficient. The board suggested this be a question for DES. Atty. Spector-Morgan advised that if this solution was proposed a new application or amendment to the existing application for variances would be necessary, with new abutter notifications.

Atty. Spector-Morgan advised Mr. Marsh that he needed something in writing from DES relative to the reduced lot size not being a threat the public health, safety and welfare. Mr. Marsh wanted to know whether if this was acceptable to DES would his variances be approved. Atty. Spector-Morgan said DES approval on the reduced lot size addresses one criteria, but there were other criteria that Mr. Marsh must meet. She said in order to prove unnecessary hardship Mr. Marsh must show there is something unique about the property that justifies the variances.

The vote passed on the motion to continue the meeting to 11/2/16.

Atty. Spector-Morgan said the ZBA would write a letter to Mr. Marsh outlining what would be needed from NHDES for 11/2/16.

Mr. Tierney told Mr. Marsh that if he has problems getting a hold of DES the board could continue the 11/2/16 meeting to allow for more time.

MINUTES

Mr. Tierney made a motion, seconded by Mrs. Erler, to approve the minutes of 5/4/16 as written. Vote passed.

Ms. Karnis made a motion, seconded by Mr. Tierney, to approve the minutes of 8/3/16 as written. Vote passed.

Mr. Tierney made a motion, seconded by Mr. Smith, to approve the minutes of 9/2/16 with the following changes:

1. Pg 1, first paragraph, 4th line up: correct 0.8 to 0.08 acres.
2. Spelling and grammatical errors: Pg. 1, 2nd paragraph under “public hearing”, change “*judgement*” to “*judgment*”; Pg. 2, 2nd paragraph, change “*hers*” to “*her*” after “...letter expressing”; Pg. 2, 4th paragraph – remove “.” after “...westerly side”; also – in 3 locations in paragraph change “*Marsh’s*” to “*Marsh*”; Pg. 3, 1st paragraph, insert “and” after “addresses density”; change “*property*” to “*properly*” after “Zoning addresses the”; Pg. 4, last paragraph – remove “it” after “...on lot #9 and if”; Pg. 5, 2nd paragraph, 8th line down – change “*Marsh’s*” to “*Marsh*”.

Vote passed.

ADJOURNMENT

Ms. Karnis made a motion, seconded by Mr. Smith, to adjourn at 6:17 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant