

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
TOWN OFFICES, Upstairs meeting room
NEW HAMPTON, NH 03256**

September 6, 2017

MEMBERS PRESENT

Regular members: Mr. Tierney, Ms. Karnis, Mr. Frazier, and Mr. Orvis. Alternate member Mr. Hofling

OTHERS PRESENT

Administrative Assistant Mrs. Vose, David Marsh, abutters Jay Wilson and Peter Tallman, surveyor Walter Horton, William Evans, and neighbors Wes & Janan Hays.

CALL TO ORDER

Chairman Mr. Tierney called the meeting to order at 7:00 PM.

Mr. Tierney appointed Mr. Hofling to vote in place of Mrs. Erler.

PUBLIC HEARING

*David & Debra Marsh
Trusts, 8 & 12 Seminole
Avenue, Tax Map U11, Lots
7 & 9, for a Variance,
Article IV, Section A.4.iii,
of the New Hampton
Zoning Ordinance*

Mrs. Vose advised that the applicants, David & Debra Marsh, has requested a Public Hearing in accordance with RSA 676:7, for a Variance 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 U11, Lots 7 & 9, taking 0.08 acres from Lot 7 and adding it to Lot 9, causing the garage on Lot 7 to be 5 feet from the side property line which is within the 20-foot setback of a property line. 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 Waukewan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified but heard from none.

Mr. Tierney briefly reviewed the history of the application beginning on 8/3/16, which included additional meetings, a site visit, and several requests for continuation. Marsh was asked to further investigate with NHDES issues brought up relative to the septic system and its proximity to the boundary line between lots 7 & 9 and whether the reduced size of lot 7 could support a replacement septic system. In May 2017 Mr. Marsh advised the Selectmen's Office that additional information had been discovered which meant a possible change to the application. Chairman Tierney wrote a letter to Mr. Marsh, which was read into record, requesting further information in order to determine whether a new application to the ZBA would be required. The original application included a variance to make lot #7 more non-conforming as the boundary line adjustment would have reduced its 0.4 acre size. Mr.

Marsh's response to Mr. Tierney's letter advised that an error had been made in the original deed for Map U11, Lot 7 when parcel "A" (land on the other side of Seminole Ave.) was added to the Marsh lot #9. A portion of land under Seminole Ave. from Waukegan Road to U11-9 (shown as lot #20 on the U11 tax map) should have been part of U11-9 at that same time. A new survey discovered this error and probate had to be reopened. Mr. Marsh advised in his letter to the ZBA that this additional land if merged with lot #7 now removes the need for the variance relative to the reduced lot size.

Mr. Marsh pointed out that the house on lot #9 currently does not meet the side setback and this boundary line adjustment will bring the house (lot 9) into compliance, while making the garage (on lot 7) 5 feet from the side property line. He pointed out that this makes the shoreline more equitable between lots #7 & #9.

The board reviewed a new survey done by Ames Associates. Mr. Horton explained that the land known as lot #20 will be absorbed by lots 7 & 9 making both of those lots more conforming in size. There was discussion on the distance from the garage on lot #7 to the current side property line. Mr. Marsh said if the variance is approved a deed will transfer most of lot #20 to lot #7 with a small amount going to lot #9, which will make lot #7 more nearly conforming.

Mr. Orvis asked where the septic tank and pump were and Mr. Horton said it was very close to the property line. Asked where the septic lines were Mr. Horton said he did not know and Mr. Marsh said this boundary line adjustment would also solve this issue of keeping the tank and lines all on one parcel. Mr. Tierney advised that the septic tank and pump that serve lot #9 is straddling the existing property line. Mr. Marsh agreed. Mr. Orvis recalled previous concerns on how was that allowed to happen. Mr. Tierney advised that one way to solve that issue without a boundary line adjustment was with the granting of an easement to access the system if repairs are necessary. Mr. Tierney asked why the property line as it exists now couldn't stay in the same location along the road, maintaining the required 20 foot distance on the southern side of the garage (on lot #7), before turning slightly NE to the edge of the shoreline where the current proposed boundary line would be, thus having the shoreline equitably divided between the two lots. Mr. Marsh said there would still be the problem with the septic tanks. Mr. Tierney pointed out that this could be dealt with by an easement and Mr. Marsh said he would prefer not to do that. He expressed concern with an easement being a deterrent when they sell the property.

Mr. Marsh advised that another advantage to this lot line adjustment was that the home on lot #7 could not expand and be made larger as expansion of dwellings was a concern during the discussions in 2016.

Mr. Tierney asked for abutter's input. Mr. Tallman advised that they had sent a letter last year stating that they had no objection with this proposal. Mr. Wilson said he supports the variance as he is concerned with the quality of the neighborhood and likes the fact that this adjustment would restrict the residence on lot #7 from being expanded.

Mr. Horton reviewed the letter from David Ames (submitted to the ZBA, 8/18/17) stating that the leaching capabilities of lot #7 would not be diminished with this resulting boundary line adjustment. Mr. Evans, former administrator for the NHDES onsite wastewater program, stated that this lot line adjustment would increase the site loading capability of lot #7 with the added acreage from lot #20. Mr. Tierney advised that this information no longer has a bearing on the application.

Mr. Tierney advised the public hearing was closed and the board would go into deliberations.

The variance will not be contrary to the public interest; the applicant states *"This is an area of town developed prior to zoning where almost all lots are under the minimum lot size. This transfer will not affect abutters or the general public"*.

Mr. Tierney advised this was not germane to the ZBA as the boundary line adjustment is for the Planning Board to approve.

Mr. Tierney advised the board needs to look at whether granting the variance will alter the essential characteristics of the locality or would threaten the public health, safety or welfare.

The spirit of the ordinance is observed; the applicant wrote *"The ordinance permits relief in cases where the proposal is reasonable and does not affect abutters or the general public"*.

Mr. Tierney advised that in this case the ordinance is trying to prevent overcrowding. Ms. Karnis pointed out that while the lot line adjustment would prevent the expansion of the home on lot #7 it could allow for the home on lot #9 to expand.

Substantial justice is done;

Mr. Tierney advised the board to determine if any loss to the individual is not outweighed by a gain to the general public. Mr. Orvis said it would better balance the shoreline between the two properties.

The values of surrounding properties are not diminished; the board agreed this was true.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; no fair

and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property – and -

The proposed use is a reasonable one – or -

The special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Ms. Karnis stated that this lot did not appear to be unusually different or unique saying there is nothing about the property itself; the issue arises out of a desire of the applicant to move the lot line. Mr. Orvis stated that it will put the septic area for lot #9 completely on its lot. Ms. Karnis advised it would have to be something unique about the land and not the fact that someone installed the septic system over the property line. Mr. Tierney confirmed with Mr. Marsh that the septic tank and pump straddled the boundary line and that the line went across lot #7 for a short distance before going across Seminole Avenue to the leach bed. Ms. Karnis said there is a reasonable use going on currently for the properties. She pointed out that the application states the lot line adjustment also allows for safe parking on lot #9 without being on the sewer pump line. She recollects there being adequate parking but it is a desire of the applicant to have this additional parking. Mr. Tierney asked the board where the hardship for the applicant is. Mr. Orvis said the issue with the septic system crossing the lot line can be handled by an easement but likes the idea of the equitable balance of shorefront but recognizes it is not a hardship. Mr. Tierney stated this is a case of wanting to do something, not having to do something, and there is nothing preventing the Marsh from using the properties as they exist today. He said the garage on lot #7 could be moved to allow for the lot line adjustment as presented. He advised that unnecessary hardship has to be proven in the case of a Variance request. Ms. Karnis pointed out that the ZBA must follow the variance criteria when making their decision and the unnecessary hardship must be a result of the land, such as extreme sloping; there is nothing unique about this property. Mr. Orvis said the only issue the applicant may want to address is the easement which should be easy to obtain as they own both lots.

The board reviewed each criteria again:

The variance will not be contrary to the public interest – the board agreed it met this criteria.

The spirit of the ordinance is observed – the board felt this criteria was not met.

Substantial justice is done – Mr. Hofling referred back to the spirit of the ordinance and a situation established prior to zoning so he said he felt the spirit of the ordinance would be maintained if the board agrees with other criteria.

The values of surrounding properties are not diminished – the board agreed.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property – the board agreed there was no hardship. Mr. Orvis mentioned that an easement could be granted for the septic system if needed.

Ms. Karnis made a motion, seconded by Mr. Orvis, to deny the variance request as the spirit of the ordinance would not be observed and because there is no unnecessary hardship due to any special conditions of the property. The vote passed 4 – yes, 1 – no.

Mr. Tierney explained the appeal process by appealing back to the ZBA with any new information which could change the decision. The next appeal would be to Superior Court.

The applicant and abutters relative to the unnecessary hardship criteria, being able to do what they want on their property, taxation, and tearing down structures and building something larger and overexpansion. Mrs. Hays said the ZBA had previously been very concerned with expansion of structures and this variance would fix this and there was additional hardship not discussed as Mrs. Marsh has a handicap and parking is an issue.

*Jeremy Hiltz Rev. Trust,
118 Main Street, Tax Map
U-7, Lot 17, for two Special
Exceptions & one
Variance. Special
Exception #1-Article IV,
Section F(2)i; Special
Exception #2-Article VI,
Section A(2); Variance -
Article IV, Section F(8), of
the New Hampton Zoning
Ordinance.*

Mr. Hiltz and surveyor Kent Brown were present.

The board was reminded that this was a continuation of the hearing on 8/2/17 where the board had previously gone through the Special Exception criteria and the board stopped the hearing when the issue of safety was discussed and requested that the applicant submit plans to better show the parking being proposed, which has been done.

Mr. Brown submitted a driveway permit that had been granted by NHDOT. He stated that when Mr. Hiltz met with DOT they wanted one entrance onto the property instead the current existing two so the entrance on the western side will no longer exist.

Mr. Brown reviewed the new drawings which showed the parking area in front of the proposed building and 2 parked vehicles. He said it allows 24' for vehicles to back out while staying out of the roadway.

Mr. Frazier asked if there would be a barrier between the parking area and Main Street that would restrict vehicles from backing out into the roadway and Mr. Brown said it would be a landscaped barrier. Mr. Tierney asked if it would be bushes; something that could not be driven over, and Mr. Hiltz said it would be grass. Mr. Orvis asked where snow removal would go and Mr. Brown showed 2 areas where it could

go but some of it would have to be removed.

Mr. Tierney reminded the board that they were considering Special Exceptions to change from a single family to a 2-family dwelling and to widen footprint, relocating the structure to the center of the lot.

Mr. Orvis expressed concern with having grass as a deterrent for vehicles entering the roadway, stating he would prefer a physical barrier. Ms. Karnis said she didn't like the idea of bushes as that could obstruct the view, while Mr. Orvis suggested curbing which would also prevent snow from being pushed into the street. Ms. Karnis said the state may not allow curbing in their ROW and it may create problems for snow removal. Mr. Hiltz said they would loam the area so it is above the pavement edge. Mr. Orvis referred to another application to the ZBA from Mr. Hiltz and Mr. Tierney reminded him that it had nothing to do with this application. Asked if it would be possible for a vehicle to accidentally enter the roadway when backing out, Mr. Hiltz said with the right momentum it would be possible with a grass berm, or a curb. Mr. Tierney advised the board is trying to prevent a hazard. The board reviewed the state's driveway permit which limits the applicant to what is allowed in the ROW, but it appeared the possibilities discussed may be allowed.

Mr. Tierney suggested that if the application is approved a condition could be that the applicant provide some type of barrier in accordance with the NHDOT driveway permit to prevent access to the road from other parts of the parking area.

Mr. Tierney said the board had gone through and agreed with all the criteria relative to the special exception (during the hearing on 8/2/17) with the exception of the whether a nuisance or hazard would be created. The board agreed this issue has now been resolved. Ms. Karnis made a motion, seconded by Mr. Hofling, to approve the Special Exceptions (1. to construct a two family home; 2. to relocate the proposed structure to the center of the lot) with the condition that the applicant provide some type of barrier in accordance with the NHDOT driveway permit to prevent access to the road from other parts of the parking area. Vote passed 4 – Yes, 1 – No.

Relative to the Variance request Mr. Tierney advised that this was similar to the situation at 55 Main Street, noting that all other districts in town would only require a total of 4 parking spaces for this 2 family dwelling where the Village district is requiring five spaces. Ms. Karnis agreed that this application is just like the one for 55 Main Street. Mr. Hofling made a motion, seconded by Ms. Karnis, to approve the Variance. Vote was unanimous.

MINUTES

Ms. Karnis made a motion, seconded by Mr. Frazier, to approve the minutes of 8/2/17 with the following amendments:

1. 1st sentence under “Public Hearing”, “Jeremy Hiltz and surveyor Kent Brown” the word “*was*” should be changed to “*were*”.
2. Page 4, under “Criterion #1, Ms. Karnis expressed concern...” the word “*their*” should be changed to “*there*”.

Vote passed.

OTHER BUSINESS

There was none.

CORRESPONDENCE

1. Letter from FEMA relative to discovery meeting for the Winnepesaukee Watershed and their Risk Mapping, Assessment, and Planning Program.
2. ZBA Training opportunity at Holderness Town Office on 9/18 at 6:15 pm. Three members to attend.
3. Training opportunity on 9/23/17.

ADJOURNMENT

Ms. Karnis made a motion, seconded by Mr. Orvis, to adjourn at 8:39 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant