

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

December 4, 2013

**MEMBERS PRESENT** Mr. Tierney, Mrs. Erler, Mr. Orvis, Mr. Frazier and Ms. Karnis (Alternate)

**OTHERS PRESENT** Secretary Mrs. Vose

**CALL TO ORDER** Acting Chair Mr. Tierney called the meeting to order at 7:00 PM explaining the Chairman Alden Hofling could not be present.

Mr. Tierney appointed Ms. Karnis to vote in place of Mr. Hofling.

*Donald & Patricia Bergeron, 553 Winona Road, Tax Map R-7, Lot 47, for a Variance, Article IV, Section I.3.ii and Article V, Section N, of the New Hampton Zoning Ordinance* Patricia Bergeron, Surveyor Bryan Bailey, and Windy Waters Conservancy President Chuck Braxton were present to represent the application.

Mrs. Vose advised that the applicants, Donald & Patricia Bergeron, have requested a Public Hearing in accordance with RSA 676:7, for a Variance under Article IV, Section I.3.ii and Article V, Section N, of the New Hampton Zoning Ordinance for property belonging to Donald & Patricia Bergeron. The applicants' proposal is to subdivide the recently surveyed 11.45 acre lot, to create a 5+ acre, non-buildable lot, to be gifted to the New Hampton Conservation Commission as the Marilyn J. Bergeron Memorial Conservation Area with a perpetual conservation easement to be held by a local conservation organization. The ordinance requires that a lot in the Waukewan Watershed Overlay District be a minimum of 2 acres of usable soil. The property is located at 553 Winona Road, Tax Map R-7, Lot #47, in the General Residential, Agricultural and Rural District and Waukewan Watershed Overlay District.

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

Mrs. Bergeron advised that Mr. Braxton would present the application.

Mr. Braxton advised that the Windy Waters Conservancy is currently responsible for the conservation of the Baird and Spear (abutting) properties. Besides the restrictions set by the zoning ordinance there is no way to allow for creation of non-buildable lots

going into conservation.

Mr. Braxton explained a drawing which showed the Winona Road, the Snake River, and the homes on the property of the Bergerons. The Bergerons had hoped to subdivide their property but due to the soil conditions and requirements in the ordinance it was not possible. The Conservancy had asked the Bergerons if they were willing to make a gift of the proposed lot. Mr. Braxton showed an outlined area which is being used as a turnout, and is likely encumbered by prescriptive use. There had been discussion with the New Hampton Conservation Commission to just do a boundary line adjustment with the abutting Spear property, with the property being held by the Conservation Commission with an extension of the conservation easement. The Meredith Conservation Commission hasn't voted on this proposal yet, so rather than hold up this gift, it was decided to move forward with an appeal for a variance. If Meredith votes not to hold the conservation easement on the new lot, the Conservancy will with identical language.

Mr. Braxton explained that a highlighted area, which includes the homes and turnout, shows the only building areas based on suitable soils. He advised that Meredith contributed money to create conservation land in New Hampton as they have an interest in protecting the Snake River as a watershed into their water supply.

Mr. Tierney confirmed that only 65,000 sq. ft. is usable soil so stated that it appears this would be a variance for both lots, as neither lot would have the required 2 acre minimum. Mr. Bailey advised that his experience was that the state requires that the area calculated as buildable, be contiguous, but it is not the case in New Hampton. He said the area with the houses is 65,000 sq. ft. and the parking area is 16,000 sq. ft. for a total of 81,000 sq. ft. and those sections are significantly separate from each other. He advised that they're not making the buildable area being used by the homes, any smaller for this grandfathered, non-conforming lot. Mrs. Erler expressed her agreement. Mr. Bailey advised that there is a larger calculated area in acreage due to the fact that the property line actually runs to the middle of the river, which added approximately 3 acres.

Mr. Braxton read the criteria and their responses.

- 1. The variance will not be contrary to the public interest because:** *"The proposed gift abuts other down conservation lands on the Snake River. No development or improvement whatsoever is allowed on the land to be gifted. The*

*proposed lot has essentially no satisfactory soils for residential development outside the state right-of-way.”*

**2. The spirit of the ordinance is observed because:** *“No residential development or improvements will occur on the lot.”*

**3. Substantial justice is done because:** *“The Zoning Ordinance does not have a specific provision for creation of protested, non-buildable lots. This variance is fair to the donor and public interest protected in the Ordinance.”*

Mrs. Erler asked if the Planning Board could add something to the ordinance to address this type of situation and Mr. Braxton said they did go to the Planning Board, so they are aware of this proposal.

**4. The values of surrounding properties are not diminished because:** *“No development will occur and the existing use will continue forever.”*

Mr. Orvis asked why this lot would have to be preserved as it can't be used anyways as it's non-buildable. Mr. Braxton said because the Bergerons would like to gift this lot and adding to the lands that are presently conserved. There was discussion that current use could apply in this case, for the Bergerons, as there is no minimum to how many acres could be in a wetland category. Mr. Bailey advised that the property owner could log the property if they chose to, but the easement will not allow that.

**5.A.i. 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 because:** *“The Ordinance does not provide for creating non-buildable protected areas. The New Hampton Conservation Commission desires fee interest in the lot. The Applicant is willing to grant the gift as a fee interest.”*

**ii. The proposed use is a reasonable one because:** *“It is a continuation of the existing use of this portion of the property and no changes in use or future development will occur.”*

**5.B....what are 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:** *“The variance is needed to accomplish the conservation objective in the manner that the Applicant and New Hampton Conservation Commission desire.”*

Mrs. Bergeron thought it would be nice to see it conserved as the Spear property is.

Mr. Tierney advised he was closing the public hearing portion of the meeting and moving into deliberations. They reviewed each of the criteria and facts.

1. The board members agreed that the proposal was beneficial to the town to extend the conservation area.
2. The board agreed. Mrs. Erler pointed out that more open space is being created.
3. The board agreed that substantial justice is done as there is no other way for the applicants to do this.
4. The board agreed that surrounding properties will only benefit from this and as the Snake River is a watershed for Meredith’s water supply this will help protect that.
- 5A. The board noted there were not special conditions of the property so went onto the last criteria, being 5B.
- 5B. Mr. Tierney said his feeling that a lack of the ordinance to allow creation of a non-buildable lot to be deeded and held in conservation, creates a special condition. The board agreed.

Mr. Tierney stated that the board is in agreement with all five facts but wants to add to the record. The way the application reads it is a request to subdivide and create a new, non-buildable lot. The current lot is already grandfathered, non-conforming, and that in the last several years this area was changed to require a 2 acre minimum in this watershed area. This proposal will not make the house lot any more non-conforming. Mr. Orvis pointed out that taking away the 16,000 sq. ft. of usable soils does make it non-conforming, though that area isn’t contiguous with the homes, and used as a turnout. Mr. Tierney advised that presently the lot can’t even meet the 2 acre minimum. Mrs. Erler pointed that the turnout area couldn’t be used by the Bergerons anyways. Ms. Karnis said as there are no proposed changes in usage it doesn’t make it more non-conforming in spirit. Mrs. Erler said that Mr. Hofling had told her he would like to see a copy of the conservation easement if all approvals are given. Mr. Braxton advised it would just like the current easements on the abutting properties.

Ms. Karnis stated that this new lot will be held in conservation, with no development on it, adding that under any different circumstance the outcome for a variance may be different.

Mrs. Erler made a motion, seconded by Ms. Karnis, to approve the variance as stated in the application and the survey, with the condition that it will be placed under conservation easement. Vote was unanimous.

## **DISCUSSION OF AMENDMENTS TO BYLAWS**

Mr. Tierney advised he made the following change:

Under Member & Alternates:

#3 - Relative to the statement that the town would reimburse “any expenses incurred for the training” they decided to add the words “*any expenses directly contributable to the training*”.

Pg. 3 - under Application/Decision:

“of” is out in the left hand margin, needs to be removed.

Mr. Tierney advised that this would now be the 3<sup>rd</sup> meeting on the by-laws and could be approved at this meeting if the board agrees.

Pg. 3, paragraph C - under Application/Decision:

Ms. Karnis stated that it was her recollection that they had previously discussed changing from “30” days to “45” days. Mrs. Vose she said she had spoken with Town Administrator Barbara Lucas who did not see this issue, as the date of receipt of the application must be received by “the board” so it provides some leeway. It was noted that the recent revisions now states: “*All other applications shall be scheduled for a public hearing to be conducted within 30 days of receipt by the Board, or on the 1<sup>st</sup> Wednesday of the month, as long as the applicant(s) is agreeable.*”

Under - 4) Decisions – Relative to posting the notice of decision at the Town Office and on the website, Mr. Tierney advised that wording was removed. Mrs. Vose pointed out that the decision will be on file and that the minutes, which will end up posted on the website, contain the decision as part of the record.

Mr. Frazier asked if he would be told about future zoning conferences, etc. and Mrs. Vose said she would let him know about those schedules as soon as the town gets notice.

A motion was made by Ms. Karnis, seconded by Mrs. Erler, to adopt the by-laws as amended. Vote was unanimous.

**MINUTES**  
11/6/13

As there was not a quorum of members that were present at the hearing on 11/6/13 no action was taken on the minutes and they were tabled to the next meeting.

**CORRESPONDENCE**

There was none.

Mrs. Vose reminded the members that on 12/10/13 at 7:00 PM the Planning Board will be holding a work session to further discuss proposed changes to zoning, for the 2014 warrant.

Mrs. Vose reminded the Board that the first Wednesday in January 2014 was New Years Day and the next meeting, if required, would be on January 8, 2014.

**ADJOURNMENT**

Mr. Tierney made a motion, seconded by Mr. Orvis, to adjourn at 7:58 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose  
Secretary

DRAFT