

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
TOWN OFFICE Upstairs Meeting Room
NEW HAMPTON, NH 03256**

September 7, 2016

MEMBERS PRESENT Regular members: Mr. Tierney, Ms. Karnis, Mrs. Erler, and Mr. Frazier, and alternate member Mr. Smith.

OTHERS PRESENT Administrative Assistant Mrs. Vose

CALL TO ORDER Mr. Tierney called the meeting to order at 7:00 PM.

Mr. Tierney appointed Mr. Smith to vote in place of Mr. Orvis.

PUBLIC HEARING Surveyor Carl Johnson, Advanced Land Surveying, was present to represent Mr. & Mrs. Marsh. Also present were applicant David Marsh and neighbors Wesley & Janan Hays and Patricia & David King.
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 he and Mr. Johnson are acquaintances but did not see any problem with his judgement in hearing this case. It was the consensus of the board that they had no issue with Mr. Tierney acting as a voting member during this hearing.

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 0.8 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.

It was noted that abutter Catherine Tallman submitted a letter expressing hers and her husband's support of the variances. The letter was read into record.

There was clarification that lot #9 has additional land on the other side of Seminole Avenue.

Mr. Johnson advised that Mr. & Mrs. Marsh's primary residence is on Map U11, Lot 9 and purchased the property on Map U11, Lot 7 in 2010. He explained that this area is close to the lake, has smaller lots, and many non-conforming situations relative to setbacks. At some point land became available on the westerly side of Seminole Ave. and some of the lakefront parcels added lots on the westerly side, to their existing substandard lakefront lot through a subdivision/boundary line adjustment. The Marshs added about 40,000 sq. ft. from the westerly side of Seminole Avenue to their lakeside lot (#9). Mr. Johnson explained that the main reason for these line adjustments to add land from the westerly side to the lakefront lots was so property owners could install septic systems further from the lake. The Marsh's septic system is located on the westerly side of the road which also has a garage and a wood shed, belonging to the Marshs. He said until the survey work was done (in 1999) that added the westerly parcels to the lakefront lots, including Marsh's lot #9, and prior to the Marshs buying lot #7 in 2010, it was assumed that the boundary line between those lots was in a position different than where it is. It was thought the line of shrubs, located where the plan reads "Parcel "A" – 3,616 SF", was the boundary line. The 1999 survey determined the line is actually 9' from the Marsh's primary home (lot #9) and 7' from the stairs leading to the deck on lot #9, which is a non-conforming situation. The Marshs have been parking their cars on that portion of land that has been determined to belong lot #7.

Mr. Johnson said the current septic system comes out of the house into a tank, then alongside the house (Mr. Johnson drew this in on a plan), and the Marshs want to avoid parking on top of the tank and lines. To facilitate a more equitable distribution of waterfront land between lot #7 & #9 the Marshs want to perform the boundary line adjustment. Mr. Johnson explained that there is a dashed line on the plan (currently located on lot #7) showing a beach area more usable to lot #9. As the Marshs currently own both lots they are able to use their entire shoreline until they convey one of the lots. Mr. Johnson advised that there are two docks on lot #7, and this boundary line

adjustment would not affect the use of those docks.

Mr. Johnson advised the moving of the lot line to make it more conforming to the Lot #9 dwelling puts the line 5' from the garage on lot #7. Mr. Johnson said access to the garage is from the side opposite this proposed lot line therefore movement on the southerly side of the garage is unaffected. He said the minimum lot size in the ordinance addresses density this proposed change in the boundary will not affect the density of the two lots. He said the purpose of the ordinance is for the orderly development of the town and the allowed uses in each zone and the use remains unchanged with this adjustment. Zoning addresses the properly and orderly situation of structures on parcels of land so there is an equitable distribution, safe access between properties, and safe distances from the lake. The use of Lot #9 is enhanced as the Marshs can park in the area they are currently parking and are trading one non-conforming situation for another. The house will now meet the northerly setback as indicated by the buildable envelope (dashed line) shown on the plan. Mrs. Erler asked what the setback was on lot #9, from the house to the southerly side property line and Mr. Johnson said they did not measure that. She asked where the house was located on lot #7 and Mr. Johnson explained that a portion of the house was shown on the plan, pointing it out, saying the required setback distance to that house is maintained. Mrs. Erler asked where the septic system is for lot #7 and Mr. Marsh said it is about where "Lot 7" is written on the plan. Mrs. Erler asked if both were year-round homes and Mr. Marsh indicated that lot #7 is year-round and lot #9 is shut down in the winter.

Mr. Johnson said there would be no diminishing of surrounding properties as the adjustment does not take any significant value from lot #7 in terms of its use. Mr. Johnson said the value of the lots may change due to the shoreline for each lot being different. He advised there were neighbors present, who live in the area and could attest to this adjustment being in line with the nature of the area.

Mrs. Erler asked about the size of the septic systems on lot #9, west of Seminole Ave. and where the wells are located (as the septic system on lot #9 serves that lot and also the lot to the south, lot #10). Mr. Marsh advised that they use lake water, no well. He said Lot #9 has a 3-bedroom system, while lot #10 has a 2-bedroom system. Mrs. Erler asked where wells could be located if at some point in the future these properties decide to stop using lake water. Mr. Johnson stated that neither lot #7 or #9 had sufficient room on the easterly side of the road to the required well radius so either a well would have to be drilled closer to the lake or a well release signed. This

boundary line does not change this situation. Ms. Karnis pointed out that moving the lot line towards lot #7, makes that lot more non-conforming, and increases the allowable building area on lot #9 on the northerly side. Ms. Karnis asked if there was room for the Marshs to park on lot #9, across the road, and Mr. Johnson said there was. Mr. Marsh confirmed the primary purpose of the structure on the westerly side of the road was a garage for storage. Mr. Marsh confirmed they currently park on the lakeside of the road (lot #9), between the house, septic tank & lines, and the shrubs, which puts this parking on the abutting lot #7.

Mr. Johnson addressed variance criteria:

1. It would not be contrary to the public interest because this should not have a negative impact to other properties or the lake. It will make the setback to the house (on lot #9) more conforming.
2. Granting the variance would do substantial justice because it would allow for more equitable distribution of land along the lake in an area primarily developed on substandard lots.
3. Granting the variance would observe the spirit of the ordinance because any ordinance allows for reasonable relief if it can be demonstrating that it is in keeping with the character and enjoyment of the neighborhood and that the rights of the abutters and general are unaffected by what being granted.
4. It would not diminish the values of surrounding properties.
5. Literal enforcement of the provisions of the ordinance result in an unnecessary hardship. No fair and substantial relationship exists between the specific application of that provision to the property as moving this boundary line takes the line from a non-conforming situation to the house, which has a lot of use on that side, putting the nonconformity to a garage which has *no* use on that side.
6. The proposed use is reasonable in the way the lake frontage and vehicle access are being used. This wouldn't create an adverse situation. With lot #7 becoming smaller the density will not change as a result of the line adjustment.

Mrs. Erler expressed concern with the resulting increase in the buildable area for the house on lot #9 and if it that home size was increased it *would* affect the density. Mr. Johnson said it wouldn't affect density but possibly lot coverage. Ms. Karnis said it could

create overbuilding in future conveyances by making lot #7 more non-conforming and allowing lot #9 to build larger than what would have been allowed. Mr. Johnson pointed out that if this boundary line adjustment was allowed the house on lot #7 could not be increased. Ms. Karnis asked what the current setback is from the garage on lot #7 to the current property line and Mr. Johnson said it was about 23'. Ms. Karnis advised that the garage on lot #7 could be increased to the south by 3 more feet with the current lot line, but if the line is changed the house on lot #9 could be increased to the north by 9 feet, creating overbuilding. Mr. Marsh pointed out that the pump tank is in that location so that side of the home could not be expanded. Mr. Marsh advised that a portion of the tank and pump serving lot #9 is on lot #7 and this is part of the hardship as they'd like to get it all on one lot. Mr. Johnson offered to the board that they could put a further restriction on the house on lot #9 that it not be expanded in a northerly direction, which could be noted on the plan when it goes to the Planning Board for approval. Ms. Karnis offered that it could also include any other variance for a structure within the setback. Mr. Johnson cautioned the board on limiting future variances for something that is not pertinent to this lot adjustment request. Mr. Johnson advised that with the current line between the two properties the garage on lot #7 could be expanded towards the lake by 30', but with the adjustment it could only be expanded towards the center of the lot.

Mr. Tierney suggested a site visit and the board agreed. Mr. Johnson suggested he take the information that appears on the septic design approval plan and merge it with the proposed boundary line adjustment to show where that system lies. The board asked that he provide that. It was noted that where Mr. Johnson had drawn in the layout of the tank and pipes it may not accurately reflect what is in the ground. Mr. Johnson pointed out that the town has a copy of the Marsh's septic design which reflects the fact that the existing tank straddling the property line is being replaced by a tank between the house and lake, with the line running closer to the house. Abutter Mr. Hays advised that those tanks (on the lot line) are still there. He said he was involved in the excavation when those tanks were replaced, which was done prior to the new septic design being done by Ames Associates. The house originally had a rusting steel tank, and at that time the state did not require any application to replace the tank. They replaced the tank with a larger one which gravity fed into the old leach field. When the new septic system was designed the pump chamber had to be added, which is just below the existing tank, on the lake side. This system is what is going to the leach field on the westerly side of Seminole Ave. They located them where they did because the original owner of lot #7, Mr. Lanning, had

shown them where he thought the property line was, which was prior to the survey. When Mr. Johnson performed the survey it was then determined that the tank straddles the line. Mr. Tierney asked Mr. Hays about the property on lot #10 being serviced by the septic system on lot #9 and Mr. Hays advised they were two completely separate systems. It was confirmed there was a garage on the lake side of lot #9 though only one line of the building is indicated on Mr. Johnson's plan. Mr. Johnson showed the septic design which showed the proximity of the tank and pump to the current lot line which differed from the one in the property file that was available during the hearing. Where the one on file with the town showed an existing tank straddling the lot line, with a new proposed tank and line being completely on lot #9, Mr. Johnson advised he had the "as-built" plan obtained from Ames Associates, which showed the tank and pump in use was still straddling the lot line. Mr. Johnson said he would update the plan to show that and supply the "as-built" plan.

Mr. Tierney asked for input from Mr. Marsh, abutters, or the public.

Mr. Marsh advised they wanted to correct an error made many years ago so if in the future lot #7 is transferred, there are no problems. He said he doesn't think this will harm the neighborhood or either property.

Neighbor Janan Hays advised that she knows the lot and backland, saying the land on the easterly side of Seminole Avenue has very little value as most of the value is on the lake side. She said lot #7 has more frontage than lot #9 and this would make the lakefront more equitable.

Neighbor Wesley Hays advised the Marshs are trying to correct a situation that took place due to an error years ago.

Neighbors Patricia & David King said they have no problem with the proposal and understand the purpose of the variance request.

After discussion, Mr. Frazier made a motion, seconded by Ms. Karnis, to continue the hearing to a site visit to 8 & 12 Seminole Avenue on 9/15/16 at 5:30 pm immediately followed by the hearing in the upstairs town meeting room, 6 Pinnacle Hill Road. Vote was unanimous.

MINUTES

There were none.

OTHER BUSINESS

Mrs. Vose provided the members information relative to the new

law, SB146, stating that municipalities shall allow accessory dwelling units, New Hampton already allows for these types of units through the special exception process.

Mrs. Vose distributed information relative to variance criteria for the members to refer to during any hearing processes and Mr. Tierney advised that new material would be forthcoming from the town's attorney that came from a law lecture series.

CORRESPONDENCE

Letter dated 8/24/16 from FEMA advising there would be a Discovery Meeting on 9/27/16 at 10:30 am, Gilford Town Hall, to discuss the flood map updates for Belknap County.

ADJOURNMENT

Ms. Karnis made a motion, seconded by Mr. Frazier, to adjourn at 8:08 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant

DRAFT