

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Fire Department Training Room, 26 Intervale Drive
New Hampton, NH 03256**

May 27, 2020

MEMBERS PRESENT Regular members: Mr. Tierney & Mrs. Belanger, and alternate members Mr. Livernois & Mr. Newman.

OTHERS PRESENT Administrative Assistant Mrs. Vose and Town Administrator Mr. Irvine to facilitate video capabilities for the purpose of televising the hearings if more than 10 people were present in the meeting space.

CALL TO ORDER Mr. Tierney called the meeting to order at 6:45 PM.

Mr. Tierney appointed Mr. Livernois to vote in place of Mrs. Arsenault and appointed Mr. Newman to vote in place of the vacant position.

PUBLIC HEARING Tania Hiltz and surveyor Kent Brown were present to represent the application.

Jeremy & Tania Hiltz, 118 Main Street, Tax Map U-7, Lot 17, for a Variance & two Special Exceptions. 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. Tierney advised that the applicants, Jeremy & Tania Hiltz, have requested a Public Hearing in accordance with RSA 674:33-a, for a Variance and two Special Exceptions.

The first Special Exception request is under Article IV, Section F.2.i to construct a two family home which is an allowed use by Special Exception. The second Special Exception request under Article VI, Section A.2 is to relocate the proposed structure to the center of the lot. The required setback from the side property lines is 15 ft. The east side setback of the previous home was non-conforming at 6.52 ft. but would become more conforming at 9.33 ft. and the west side setback of the previous home was 13.78 ft. and is proposed to be 10.05 ft. The proposed structure will be dimensionally non-conforming, but is part of a conforming use. The Variance is under Article IV, Section F.8 of the New Hampton Zoning Ordinance. The applicant's proposal is to provide four parking spaces instead of the required five parking spaces as the regulations require 2 spaces per bedroom for the first two, plus ½ space per each additional bedroom. The applicant's proposal is for two bedrooms in each unit.

The property belonging to Jeremy J. Hiltz Revocable Trust is located at 118 Main Street, Tax Map U-7, Lot #17, in the Village District.

Mrs. Vose advised that all abutters were notified but heard from none. Mr. Tierney advised that the board must determine if this application had a regional impact and the board agreed it did not. Mr. Tierney advised that

when Jeremy Hiltz had previously applied for the 2 Special Exceptions and 1 Variance in 2017, the parking regulations in the Village District were more stringent, requiring a Variance. When it was discovered that the parking requirements were not in keeping with other districts in town this regulation was changed and as a result this Variance is no longer necessary for spaces vs number of bedrooms being proposed in the two dwelling units.

Mr. Brown reviewed a plan showing the house that was originally in the location, which has since been demolished and a new 2-family home being proposed. The footprint of the previous home was 1,076 sq. ft. and the proposed home would be 1,064 sq. ft. and would be more centered on the lot. As the nearest abutters are a cemetery and the parking area for apartments Mr. Brown said it wouldn't have a negative impact. Mr. Tierney confirmed with Mrs. Hiltz that the property was under a purchase & sales agreement and the buyers wanted this approval beforehand and Mrs. Hiltz said it was her understanding they wanted to construct a 2 family dwelling unit but didn't know the layout of the 2 dwellings. Mr. Livernois confirmed that this property was on town water and sewer.

Mr. Tierney said the board would review the criteria as it relates to both Special Exception requests making a decision after reviewing all criteria.

1. **The specific site is an appropriate location for such use:** The applicant writes *"the proposed use as a two-family home replaces an existing single family home. The site is located in the Village District in an area adjacent to the New Hampton School. This new home will continue to provide housing in an area of town that requires it."* Mr. Brown added that it's in a residential area, it was residential and will continue to be residential.
2. **There is adequate area for safe and sanitary sewage disposal:** The applicant writes *"there is town water and sewer available."*
3. **The use will not adversely affect the adjacent area:** The applicant writes *"no adverse effects are anticipated by the development."* Mr. Brown said the use is similar to what it was before.
4. **There will be no nuisance or hazard created:** The applicant writes *"No nuisance or hazard will be created."* Mr. Brown said nothing is changing from the original use.
5. **Adequate and appropriate facilities will be provided for the proper operation of the proposed use:** The applicant writes *"Sewer, water and access from a town road will provide adequate facilities for the proposed use."* Mr. Brown said it is subject to a driveway permit from the state and should still be in effect as it doesn't have a time limit. Mr. Tierney asked Mr. Brown to provide a copy of the permit to the town.
6. **The use will not impair the aesthetic values exhibited by the**

surrounding neighborhood: The applicant writes “*the new home will have architectural elements consistent with the surrounding homes.*” Mr. Brown said the architectural standard would be similar to other buildings in the area.

7. **The building, parking/or driveway area will not exceed 50% of the lot:** The applicant writes “*the total lot area is 6,519 sf and the total building and parking areas is 2,394 sf which is 37% of the lot.*”

Mr. Tierney called for any public comment and Mr. Irvine said that there has been a reference to town water and sewer and he clarified it was Precinct water and sewer. It was noted that water and sewer is not supplied by the town, but by the Precinct.

Mr. Tierney advised the board would go into deliberations.

The board agreed this was an appropriate location for this proposed use. Mr. Livernois asked about a reference on the plan which notes “Lot 15” when he thought it should note 17. Mr. Brown confirmed that was a typo and it should be labeled “lot 17”.

The board agreed the Precinct water and sewer could handle the proposed use and would not affect the surrounding area. The board agreed this use would not create a nuisance or hazard. Mr. Tierney pointed out that when this application came to the ZBA in 2017 there had been some concern with vehicles leaving the parking area to the proposed home and backing out into Main Street but it was resolved through the change in the parking layout. What had been considered a hazard is now eliminated with the berm/curbing which would prohibit vehicles from backing out onto Main Street.

The board agreed adequate and appropriate facilities were provided for the use and home would not impair the aesthetic values of the neighborhood. Mr. Tierney advised that a building permit would be required. The board agreed the proposal did not exceed the 50% lot coverage.

The board agreed that the criteria for Agritourism activity did not apply to this application.

Mr. Livernois said he feels the application meets all the criteria and meets the needs of the area and the school in this compact area. The board agreed. Mr. Livernois made a motion, seconded by Mrs. Belanger that this application meets all the criteria for a Special Exception for both the setback distances and the multi-family dwelling. Vote was unanimous.

Mrs. Belanger made a motion, seconded by Mr. Newman to approve the following conditions for the approval of the Special Exceptions:

1. Submission of a copy of the driveway permit approved by NHDOT.
2. Berm or curb stop must be constructed to be sufficient to prevent vehicles from backing out onto Main Street.
3. The building permit when submitted must be reviewed and approved

by the Fire Department.
Vote was unanimous.

PUBLIC HEARING

Marsha Wintringham Rev. Trust, 54 West Shore Road, Tax Map U-15, Lot 8, for an Equitable Waiver of Dimensional Requirement, Article IV, Section A(4)iii of the New Hampton Zoning Ordinance

William Wintringham and and son-in-law, Ryan St. Aubin, were present.

Mrs. Vose advised the applicant, Wintringham Revocable Trust (William & Marsha Wintringham-TTEES), have requested a Public Hearing in accordance with RSA 674:33-a, for an Equitable Waiver of Dimensional Requirement. The property owners, Wintringham Revocable Trust, constructed a small deck, within the 20 foot setback from the side property line. This was discovered when the town assessors visited the property.

The property is owned by Marsha A. Wintringham Revocable Trust and is located at 54 West Shore Road, Tax Map U-15, Lot #8, in the General Residential, Agricultural, and Rural District (GR) and Waukegan Watershed Overlay District.

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

Mr. Wintringham said he obtained a building permit to renovate the kitchen and bathroom and when the contractor was there he had spoken to Mrs. Wintringham to repair and replace the existing deck. The contractor suggested moving the deck to improve the access to the cabin, which they did. Mr. Tierney confirmed with Mr. Wintringham that the deck addition was in a location where there had not been a deck previously. Mr. Wintringham said the added deck improved the traffic flow to the existing deck. Mr. Tierney advised that the “after-the-fact” building permit submitted shows the deck at one end is 20’ from the side property line but from the other end, closer to the water, it is 12’ from the property line. Mr. Tierney said he did visit the site and could not locate boundary markers for the property line on that side.

Mr. Livernois asked if there was any discussion with his wife or the contractor about setbacks and Mr. Wintringham said no, but that it was a good idea to add the decking for traffic flow better into the cabin. He said he spoke to one of the abutters who said they didn’t have any problem with it. Mr. Livernois confirmed that this deck work was part of the work being done under the building permit for renovations and asked if he had to provide setback distances to property lines at that time. Mr. Wintringham said he did not as it was just interior renovations.

The violation was not noticed or discovered by any owner, owner’s agent, or municipal officials until after a structure in violation had been substantially completed: The applicant wrote *“after construction was completed the 6 foot deck was identified as being in violation during a routine assessment of the property by our assessor”*.

Mrs. Belanger asked what the time period was between when it was constructed and when it was assessed. Mr. Wintringham said it was likely 2-3 years. Mrs. Vose advised that the after the fact permit was obtained in

May 2019, the original building permit was submitted Dec. 2016, and in 2018 the deck was discovered by the assessor. Mr. Wintringham said there is a spigot on the side of the house where this new deck is and now when they clean their feet they don't walk back through the dirt prior to entering the home. The board looked at photos taken by Permitting Assistant Robert Pollock when he visited the site after receipt of the after-the-fact building permit when there was concern on the setback distances.

The violation was not an outcome of ignorance of law or ordinance, failure to inquire, misrepresentation or bad faith on the part of the owner or owner's agent: The applicant states *"decision to add to the existing deck was made during routine maintenance and replacement of ht existing decking, improving the wood to a maintenance free material. As the contractor was on site, materials were available, the project was a 6' deck, improving traffic flow and aesthetics of the property, no thought was given to amending the existing permit (kitchen and bath renovation)"*.

The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, not interfere with or adversely affect any present or permissible future uses of any such property: The applicant states *"as stated in question 2 the modest deck improves the entrance to the property, increases functionality and aesthetics without interfering with present or future uses of the cabin"*.

Mr. Tierney advised that he visited the site saying that the property to the south of the deck has a house that sits close to the road and there is a lot of open area between the deck and the neighboring home. Mr. Wintringham said that home is used for overflow visitors as that property owner has another cottage across the street which is their main cottage. Mr. Tierney confirmed that the applicant indicates one end of the deck meeting the 20' side setback while the other end is 13' from the side property line.

That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected: The applicant states *"the property was subdivided in 1976, when I purchased the property. At that time, the 20 foot setback requirement was either nonexistent or was waived, as the cabin is not in compliance. The modest 6' deck improves functionality and aesthetics without interfering with the abutting properties"*.

Mr. Tierney advised the board would go into deliberations.

Mr. Livernois said he wants to grant the equitable waiver as the applicant *almost* meets all the criteria but is concerned with criteria "b" that the violation was not an outcome of an ignorance of the law, or ordinance, but that it must be caused by a good faith error in measurement or calculation or by an error in the ordinance interpretation made by a municipal official and this application doesn't meet either. He said the applicant said it was

an ignorance of the law that caused this but recognized that the owners acted in good faith. Mr. Livernois said looking at the law and the facts in this application it doesn't meet criteria "I.(b)". Mrs. Belanger agreed and pointed out that it also states "failure to inquire". Mr. Tierney said that the equitable waiver requirements states that all the following findings (of criteria) must be met.

Mr. Livernois made a motion, seconded by Mrs. Belanger that the application be denied on the grounds it does not meet all the criteria, in particular did not meet criteria I.(b) under the state statute RSA 672:33-a. Vote was unanimous.

The board advised that Mr. Wintringham could remove the deck which is not in compliance, hire a surveyor to determine exactly where the property line is located to see if the deck might meet the setback requirement, a lot line adjustment with that abutter, or to seek a Variance with the ZBA which includes a hardship criteria. Mr. Wintringham asked what the time limit was and Mr. Livernois advised the Selectmen were the ones to enforce regulation.

ELECTION OF OFFICERS

Mr. Tierney advised he would like to postpone the election of officers to a discussion of the election on 6/3/20 as all members will then be present.

MINUTES

Minutes of 9/4/19 were held as 2 pgs were missing.

OTHER BUSINESS

There was none.

CORRESPONDENCE

There was none.

ADJOURNMENT

Mrs. Belanger made a motion, seconded by Mr. Tierney, to adjourn at 7:49 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Administrative Assistant