



## **ZONING BOARD OF ADJUSTMENT**

**Town of Greenland • Greenland, NH 03840**

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### **MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING**

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Tuesday, February 15, 2022 – 6:30 p.m. – Town Hall Conference Room

Members Present: Steve Gerrato, Ron Gross, Chip Hussey (Zoom), David Sandmann (Zoom), Leonard Schwab

Members Absent: Bob Dell Isola (Alternate)

Staff Absent: Jack Shephard, Building Inspector

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Chair Sandman opened the Board of Adjustment meeting at 6:30 p.m. and a roll call was taken. He stated a quorum was present and the meeting was being recorded.

**1. 776 Post Road (Residential Zone – R3, 12)**

Application: Request for a Variance

Owner/Applicant: Deborah Johnson

The owner/applicant is requesting a Variance from Article IV – Dimensional Requirements, Section 4.2 – Table of Dimensional Requirements, Item 'B' – Lot Front Minimum (ft), to allow a reduction in frontage from 200 ft. to 180 ft., creating a non-conforming lot.

Deborah Johnson addressed the Board. Also present was Doug MacDonald, Attorney with Keane and MacDonald and the applicant's counsel. This application was continued from the meeting on Tuesday, December 21, 2021. D. Johnson's property has 200 feet of frontage and abuts North Hampton. Her neighbor's property has 125 feet of frontage.

D. Sandmann explained that the issue is the non-conforming lot and a portion of the neighbor's driveway is on D. Johnson's property. The plan indicates that at the very edge of the south side of D. Johnson's property is the neighbor's driveway. The Request for a Variance is to reduce D. Johnson's frontage on Post Road to 180 feet; the neighbor would gain 20 feet of frontage. This would create two non-conforming lots. Attorney MacDonald clarified that the neighbor's driveway encroaches on D. Johnson's property. The neighbor's house was built in 1952; D. Johnson's house was built in 1956. S. Gerrato questioned why non-conforming lots were being discussed. C. Hussey stated that the original lot (776 Post Road) was purchased in 1949.

Attorney MacDonald stated the D. Johnson recently purchased her property. S. Gerrato noted that 200 feet of frontage was not required when the house was built in 1956. When D. Johnson had her property surveyed, she realized that the southerly boundary cuts through the driveway on the abutting property. In addition, a deck expansion was done on the back of the neighbor's house; when you step off, you are almost on D. Johnson's property. D. Johnson and her neighbor discussed the location of the property line. When the owner of the abutting lot purchased the property, she was led to believe that the property line was further back and there was no discussion about the driveway.

After the survey was done and D. Johnson realized there was a problem, discussions were started with the abutter and her attorney about ways to resolve the issue in an amicable manner and not go to court. The result was a boundary line adjustment. Some of the benefits of the boundary line adjustment were the title concerns; an easement would have a title insurance exception. The title would also accept that portion of the property that is subject to the easement. An easement could also be an issue with maintenance. Liability insurance was the biggest benefit. After checking with the insurance company, Attorney MacDonald stated a boundary line adjustment was the cleanest way.

R. Gross questioned the results of the title search when D. Johnson purchased her property. Attorney MacDonald felt the plan set used did not show the encroachment and a survey was not done. There was further discussion about the recorded plat; Attorney MacDonald noted that plats are not always accurate with surveying encroachments, etc. The plans on record do not indicate an encroachment. L. Schwab asked if a survey was done when the neighbor purchased her property; D. Johnson responded that a survey was not done. L. Schwab, after discussion, stated that it was not D. Johnson's problem and she should not have to be at the ZBA. Attorney MacDonald stated that it was a cooperative effort and there is an agreement.

The survey was done because D. Johnson wanted to put up fencing and needed to know the location of the property line. R. Gross was surprised that when they each purchased their respective property in 2019, neither had an accurate survey done or determined that the property descriptions were inaccurate. D. Johnson responded that they have deeds; her deed does not mention pins/rods, the neighbor's does. They could not locate the markers and the surveyor could not. The plan will give the abutter the proper rear setback of 20 feet as well as the proper setback from the side of her house to the property line.

The neighbor's rear property line is approximately 2 feet from the deck (added after the house was purchased). Attorney MacDonald noted that the deck does not encroach but if you step off the deck, it would be trespassing. R. Gross noted the house was in the setbacks, adding there was no way the neighbor could have presented a proper lot drawing and been issued a building permit or received a waiver. R. Gross stated these may not be D. Johnson's problems to resolve. The ZBA was being asked to do something they may not be able to do to resolve the problems. Attorney MacDonald commented it was the applicant's property that was being affected. The neighbor's property is benefitting from the applicant's request; the request was being made because it was the sensible legal way to resolve the issue and issues surrounding other alternatives (example: insurance).

D. Johnson read the criteria into the record (copy on file). The Administrative Assistant noted that there was a building permit from the previous Building Inspector for vinyl siding and a 6-foot x 9-foot front porch. There was no building permit for the 10-foot x 20-foot deck; a plot plan was in the file, but no permit. Jack Shephard, Building Inspector, stated there has been no building permit applied for since he has been here. It looked like both decks were built at the same time.

C. Hussey stated that during his research he could not find anything that would allow the Zoning Board to make a conforming lot non-conforming. He noted that dates were important. The last of the two lots were purchased in 1949 (776 Post Road). In 1952, the house at 784 Post Road was built. In 1955, the Town warrant included a zoning article indicating "that each lot shall a frontage of at least 100 feet and shall have a total area of not less than 10,000 square feet". In 1956, 776 Post Road was built. The waters got muddied in 1987: there was an original lot subdivision requirement leaving an existing lot which is now R3, 12 (776 Post Road). At that time, zoning allowed 200 feet of frontage. According to the plan on file at the Registry of Deeds, the southern border along Post Road that abuts the neighbor

(the area of the driveway) shows a contested ownership of a triangular piece between the two lots. The plan does not note or include any reason why it was contested.

C. Hussey continued that in 1980, in the case of Win-Tasch Corp. vs Merrimack (120 NH 6), referred to a 'Grandfather Clause which explicitly refers only to plots recorded before 1964, but which was consistently applied by the Building Inspector to any subdivision recorded before passage of stricter minimum lot sizes, will be interpreted according to past practice'. Past practice would apply to both lots if the 1987 subdivision did not fix the contested portion of the property. A Variance could be requested under those circumstances. The subdivision was not really correct the way it was handled and should be cleaned up by the ZBA as an appeal. C. Hussey added this if it was a clean, untested area he would have a problem moving forward. However, the Board would be correct in granting the Variance based on the 1980 case. This would actually correct the 1987 error which should have been resolved when the subdivision was created.

L. Schwab: The data from C. Hussey was very good and very appropriate. What the Board was asking to be done was to make this a conforming lot per earlier codes. He did not have a problem with that. S. Gerrato: Did not see a problem; the Board could clean it up. These were built when 200-feet of frontage was not required; they were built when the requirement was 125-feet. R. Gross was concerned about setting a precedence by allowing a non-conforming lot to be created. It needed to be 100% clear this was the only way it could be done. Otherwise, the Board would be setting another precedence by creating a non-conforming lot. Other pieces of land could not be changed into non-conforming lots. Land is now part of the current Zoning Ordinances. Regardless of when the lot was created, it still had to be discussed because it was a non-conforming lot under current rules.

D. Sandmann agreed making a conforming lot, non-conforming was problematic. He also noted that there was a discrepancy when the house was built that was not addressed. Addressing it now by allowing the Variance would meet the criteria for when the building was built.

C. Hussey pointed out it was stated in the court decision that if the lot was recorded before 1964 it would revert back to the older zoning. New zoning could not be enforced on a lot that was approved. In 1987, 776 Post Road was part of a subdivision. It could be made to conform to that but the contested triangle remained and should not have made it through the Board. L. Schwab noted that in the early days there was a de facto non-conforming lot. C. Hussey stated that in his opinion, the subdivision was never completed. An error was made and the ZBA needed to correct it.

MOTION: L. Schwab moved to grant the Variance requested by Deborah Johnson, 776 Post Road (Map R3, 12), from Article IV – Dimensional Requirements, Section 4.2 – Table of Dimensional Requirements, Item 'B' – Lot Front Minimum (ft), to allow a reduction in frontage from 200 ft. to 180 ft., creating a non-conforming lot. Second – S. Gerrato

Discussion: C. Hussey recommended the Planning Board be notified why the Request for a Variance was granted and that a note be included on the plan. D. Sandmann recommended a codicil be added to the motion regarding the dispute dating back to the 1950's. C. Hussey stated that the original deed was done in 1949, the house was built in 1956, and then there was a subdivision in 1987. C. Hussey felt the error was made during the subdivision.

AMENDED MOTION: L. Schwab moved to grant the Variance requested by Deborah Johnson, 776 Post Road (Map R3, 12), from Article IV – Dimensional Requirements, Section 4.2 – Table of Dimensional Requirements, Item 'B' – Lot Front Minimum (ft), to allow a reduction in frontage from 200 feet to 180

## DRAFT: SUBJECT TO CHANGE

feet, correcting the contested ownership that was indicated on a 1987 plot plan. This is a result of the 1980 court case of Win-Tasch Corp v. Merrimack, Case No. 120 NH 6 which allows for any lot created before 1964 to revert back to the original zoning. Second – S. Gerrato. Roll call: S. Gerrato – yes, R. Gross – yes, C. Hussey – yes, L. Schwab – yes, D. Sandmann – yes; all in favor. MOTION CARRIED

### 2. Approval of Minutes

MOTION: C. Hussey moved to approve the minutes of Tuesday, December 21, 2021. Second – S. Gerrato. Roll call: S. Gerrato – yes, R. Gross – abstain, C. Hussey – yes, L. Schwab – yes, D. Sandmann – yes; three in favor, one abstained (R. Gross). MOTION CARRIED

### 3. Other Business

There was no ‘Other Business’ to discuss.

### 4. Adjournment

MOTION: D. Sandmann moved to adjourn at 7:25 p.m. Second – S. Gerrato. Roll call: S. Gerrato – yes, R. Gross – yes, C. Hussey – yes, L. Schwab – yes, D. Sandmann – yes; all in favor. MOTION CARRIED

NEXT MEETING
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Tuesday, March 15, 2022 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant