

NOTICE OF DECISION

Washington Zoning Board of Adjustment

Case No: 15-131

Date of Decision: 10/25/2023



The Select Board, any party to the action, or any person directly affected has a right to appeal this decision. For complete information, see [RSA 677:2 Rehearing and Appeal Procedures](#). This notice has been placed on file and made available for public inspection in the records of the ZBA. Copies of this notice have been distributed to the applicant and the Select Board.

Applicant	Chris Stratton
Address	6142 Whiskey Creek Drive #601, Fort Myers FL, 33919
Owner	Chris Stratton
Lot	15-131

You are hereby notified of the decision by vote of the ZBA of the following variances.

	Variance	LUO	Decision
1	Front setback of 40' where 50' is required	§ 202	GRANTED ^[1]
2	Well setback closer than 50' to right-of-way	§ 312	GRANTED ^[1]
3	Wetland setback of 13' where 50' is required	§ 202	DENIED
4	Septic system setback from surface water of 50-60' where 75' is required ^[2]	§ 303.1	DENIED

^[1] The Applicant is reminded that, pursuant to [RSA 674:33 Powers of Zoning Board of Adjustment](#), these variances are valid only if exercised within 2 years from the date of final approval, or as further extended for good cause.

^[2] The exact setback could not be determined, although it was agreed to fall into this range.

References

RSA 674:33	Powers of Zoning Board of Adjustment	https://tinyurl.com/3s33w79d
RSA 677:2	Rehearing and Appeal Procedures	https://tinyurl.com/mr3erk82
LUOs	Washington Land Use Ordinance	https://tinyurl.com/yrdscxba
Application	Application for a Variance 10/4/2023	https://tinyurl.com/5n6mec3x

Findings of Fact

Setback Variances #1 and #2

Variance Criteria	Satisfied?
Variances must not be contrary to the public interest	Yes ^[3]
The spirit of the Land Use Ordinance will be observed	Yes ^[3]
Substantial justice will be done	Yes ^[3]
The values of surrounding properties will not be diminished	Yes ^[3]
Literal enforcement of the Land Use Ordinance would result in unnecessary hardship	Yes ^[3]

^[3] The Board accepts the representations of the applicant in support of these variance criteria.

Wetland Variances #3 and #4

Variance Criteria	Satisfied?
Variances must not be contrary to the public interest	No
The spirit of the Land Use Ordinance will be observed	No
Substantial justice will be done	Yes ^[4]

The values of surrounding properties will not be diminished	Yes ^[4]
Literal enforcement of the Land Use Ordinance would result in unnecessary hardship	No

^[4] The Board accepts the representations of the applicant in support of these variance criteria.

Public Interest and Spirit of the Ordinance

Site visits by Board members and expert testimony from members of the Conservation Commission shows that a majority of the applicant's lot is covered by wetland which in turn is covered by significant surface water. The lot is edged by a perennial stream connecting Millen Lake with Lake Ashuelot, as shown on the [official Town maps](#) (data sourced from NH GRANIT).

- c. Ensure proper use of natural resources

Unnecessary Hardship

Although the presence of wetland in the applicant's lot represents a "special condition", the Board determines that the hardship induced is self-created and that as a consequence this prong of the variance criteria is not met.

[Hill v. Town of Chester](#), 146 N.H. 291 (2001) held that "purchase with knowledge" of the zoning restrictions does not preclude the landowner from obtaining a variance, but should be a factor to be considered. According to the Court, "To counter the fact that the hardship was self-created because the landowner had actual or constructive knowledge of the zoning restrictions, the landowner can introduce evidence of good faith." Among the ways an applicant can show good faith, the Court said, are: compliance with rules and procedures of the ordinance; use of other alternatives to relieve the hardship before requesting a variance; reliance upon the representations of zoning authorities or builders; no actual or constructive knowledge of the zoning requirement.

However, none of the above conditions are met, and furthermore the [Zillow listing](#) for the property at the time of purchase (May 2023) clearly indicates that "[p]roperty will most likely need a wetland variance approved by the town".



Save Share More

0.75 Acres
M15 L131 Adams Drive, Washington, NH 03280

Closed
: **\$8,750** | Sold on 05/31/23 | Zestimate®: None ?
Est. refi payment: \$119/mo [Refinance your loan](#)

Home value Owner tools Home details Neighborhood details

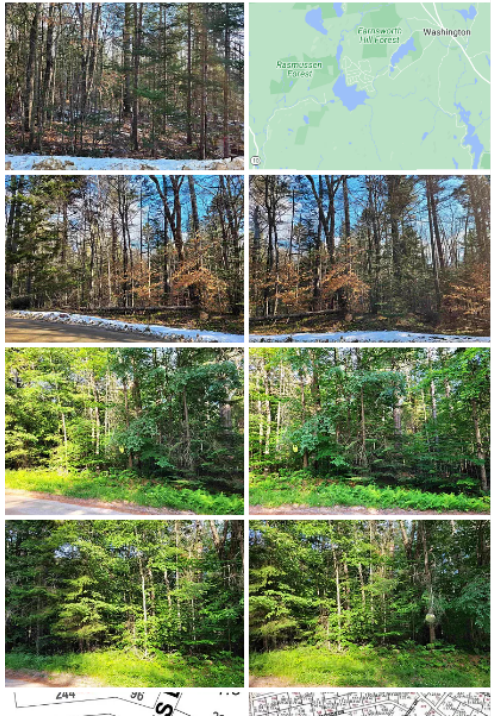
Overview

Come find out what the possibilities are for this .75 acre lot located within the desirable lake community known as Lake Ashuelot Estates! With Lake Ashuelot being only a few minutes' walk away, this property is ideal for outdoor enthusiasts and nature lovers. This property's location offers canoeing, kayaking, fishing, boating, swimming, tennis, skiing, snowmobiling, hiking in nearby trails and much more. The association amenities include year-round road maintenance, lake access, the use of a private tennis court, basketball court, club house, playground, boat launch, and beach area. This lot is close to Pillsbury State Park, about 35 minutes to Mount Sunapee, 30 minutes to Pat's Peak Ski Area, and 35 minutes from Crotched Mountain. Don't let this rare opportunity in the low tax town of Washington pass you by! **Seller had boundaries and wetlands flagged. There is a map of the building envelope drawn up that is available upon request. Property will most likely need a wetland variance approved by the town.

[Hide](#)

Listed by:
Abby Fino,
Bean Group / Peterborough 800-450-7784

Source: PrimeMLS, MLS#: 4940415 [PrimeMLS](#)



Other Considerations

The applicant tentatively requested a variance from the provision of LUO §202 that enforces setback requirements for propane tanks. However, that provision was repealed in March 2023 and the Board determines that no variance is necessary.

The Board finds that the applicant was likely in technical violation of LUO §303.1, in that “test pits must be witnessed by the Town Health Officer or another authorized agent of the Town of Washington.” However, it determines that neither granting nor denying a variance (the only actions available to the Board) would provide meaningful remediation and delegates any further consideration to the Select Board.