

**ZONING BOARD OF ADJUSTMENT**  
**P.O. Box 227**  
**FREEDOM, NH 03836**

Freedom Zoning Board of Adjustment: **April 30, 2013**

Present: Chairman Scott Lees; Vice-Chairman Craig Niiler; Karl Ogren; Jake Stephan; Tim Cupka

Others Present: Linda Farinella, Recording Secretary

Chairman Lees called the meeting to order at 7:07 pm.

During this meeting the following cases will be heard:

**Case #3-2-12 Freedom Village Condominiums**

**Case #29-05-13 Jon Comeford**

**Case #32-8-13 Frank J. and Kathryn M. Lalumiere**

**Case #49-9-13 David K. and Denys D. Caplan**

**Case #33-01-13 Anthony W. Butler**

**Case #23-17-13 Mark Goldstein**

Notification of this meeting was published in the Conway Daily Sun and posted at the Freedom Town Office and the Freedom Post Office.

Chairman Lees introduced the Board to the public.

Motion by Ogren, seconded by Cupka to accept the minutes of the March 26, 2013 as written. The motion passed unanimously.

Chairman Lees invited **Case #3-2-12 Freedom Village Condominiums** to approach the board with a continued request for a special exception under Article 3 Section 304.6.3.1 and a variance under Article 1 Section 103 to repair a boat ramp that requires erosion control measures.

A letter from Michael Gaudette, Agent, was received requesting this application be withdrawn. A new application will be submitted at a later date. Motion by Chairman Lees, seconded by Cupka to accept the withdrawal without prejudice. The motion passed unanimously.

Chairman Lees invited **Case #29-5-13 Jon Comeford** to approach the board with a continued request for a special exception under Article 3 Sections 304.6.3.1 and 304.6.5.3 and variances under Article 3 Section 310.1.5 and Table 304.2 to construct a home and garage within the side line setback, exceed the allowable 10% lot coverage, clearing plan and erosion control.

Mr. Comeford and his Agent Mark McConkey approached the Board. Mr. McConkey stated that the applicant has removed the garage request from his application, referencing plan sheet 1 of 4. A new plan has been submitted reflecting the 2,326 square feet or 9.6% lot coverage; it is within the 10% allowable coverage which makes the request for a

variance from Section 310.1.5 unnecessary. The applicant still requests a variance to set the home within the sideline setback at 20ø from the line, following the orientation of the homes already on the street.

The request for a special exception for erosion control on sheet 2 of 4 shows silt fencing and infiltration trench.

Sheet 4 of 4 shows the trees that were on the hillside. These were removed not knowing the zoning ordinance has changed. Mr. McConkey plotted the location of the trees and shrubs to be added. There were no points left in any grids.

Sheet 3 of 4 shows the plantings to be done. These include 31 white pines at 3.1ø diameter at 4.5ø up the tree. These pines will be planted along the sidelines of the property and slope. Fifty-two yew plants will be used for ground cover.

Chairman Lees asked what the point value of the planting will be. Mr. McConkey was not sure but stated it is at least 80% of what was needed and in no time the growth will bring it to 100%. Mr. McConkey offered to calculate the point value and submit in letter form.

Chairman Lees asked for abutter or public comment regarding Article 3 Table 304.2. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Table 304.2.

The board reviewed the variance worksheet for Article 3 Table 304.2 to construct a house within the sideline setback:

1. 5 to 0
2. 5 to 0
3. 5 to 0
4. 5 to 0
- 5Ai. 5 to 0
- 5Aii. 5 to 0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested variance from Article 3 Section 304.2 of the Town of Freedom Zoning Ordinance be granted with the following condition:

1. Per plan "Plot Plan for Jon Comeford Tree Survey Existing Conditions: The lot was cleared of trees on 7/15/2012" Sheet 1 of 4; Prepared by Mark McConkey dated 04/06/2013.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.3.1. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.3.1.

The board reviewed the special exception worksheet for Article 3 Section 304.6.3.1 regarding erosion control:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Cupka that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.3.1 of the Town of Freedom Zoning Ordinance be granted with the following condition:

1. Per plan "Plot Plan for Jon Comeford Tree Survey Existing Conditions: The lot was cleared of trees on 7/15/2012" Sheet 2 of 4; Prepared by Mark McConkey dated 04/06/2013.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.5.3. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.5.3.

The board reviewed the special exception worksheet for Article 3 Section 304.6.5.3 regarding a clearing plan:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Cupka that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.5.3 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per plan "Plot Plan for Jon Comeford Tree Survey Existing Conditions: The lot was cleared of trees on 7/15/2012" Sheet 4 of 4; Prepared by Mark McConkey dated 04/06/2013.

2. Letter to be submitted by 05/13/2013 with points value of proposed plantings.
3. One year from date of approval applicant shall submit to the ZBA photographic evidence of successful plantings and replacement of ones that died.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees invited **Case #32-8-13 Frank J. and Kathryn M. Lalumiere** to approach the board with a continued request for special exceptions under Article 3 Sections 304.6.3.1 and 304.6.5 and variances under Article 3 Section 310.1.5 and Table 304.2 to construct within the setback steps, drainage swale, retaining wall and level lip spreader; exceed the allowable 10% lot coverage, tree removal.

Agent James Rines of White Mountain Survey and Engineering along with Kathryn Lalumiere approached the Board. Mr. Rines explained that the purpose of the stairs is to get down to the water in a safer manner than was proposed in their 2010 application. The new drawings take into consideration the concern of an abutter. The April plan showed the stairs at 16.9ø from the sideline; the most recent plan has the stairs at 26.3ø away.

The lot coverage percentage has changed from 12.05% in 2010 to 13.54% in March 2013 to presently 11.69%. The number of landings has changed from three in 2010 to seven in March 2013 to presently six.

There will only be one tree taken and it is not viable as opposed to the original plan that had a large v-shaped area to be taken.

Ultimately, Mr. Rines explained that the result of these changes addressed the ZBA and abutter concerns, reduced the impervious surface area and reduced the sideline encroachment.

Chairman Lees asked if there were any abutter or public comment.

Karen Hudson, abutter at 41 Abenaki Drive, had not seen the newest revisions. Mrs. Hudson would like to see the 30ø setback be maintained as it was with her other neighbors the Howlandø. Mrs. Hudson also expressed her concern of tree cutting and using stone instead of wood for the stairs.

Mr. Rines expressed that the stone is a more natural choice over wood and it will be built into the ground, not elevated. The stairs have been move 10ø away from the previously proposed site.

Ogren asked if this new approval would take away the 2010 approval. All agreed it would.

Chairman Lees asked for abutter or public comment regarding Article 3 Table 310.1.5. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Table 310.1.5.

The board reviewed the variance worksheet for Article 3 Table 310.1.5 to exceed the allowable 10% lot coverage:

- 1. 5 to 0
- 2. 5 to 0
- 3. 5 to 0
- 4. 5 to 0
- 5Ai. 5 to 0
- 5Aii. 5 to 0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested variance from Article 3 Section 310.1.5 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

- 1. Per Plan Amendment to Shoreland Approval 2010-00723 Shoreland Redevelopment Plan for Frank and Kathryn Lalumiereö revision date 04/11/2013 prepared by White Mountain Survey and Engineering.
- 2. Variance is to exceed the 10% lot coverage by no more than 1.7%.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.3.1. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.3.1.

The board reviewed the special exception worksheet for Article 3 Section 304.6.3.1 regarding disturbing land of less than 100,000 sq feet to allow for construction of steps, drainage swale, retaining wall and level lip spreader:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.3.1 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

- 1. Per Plan Amendment to Shoreland Approval 2010-00723 Shoreland Redevelopment Plan for Frank and Kathryn Lalumiereö revision date 04/11/2013 prepared by White Mountain Survey and Engineering.

2. Prior to construction erosion control shall be installed and remain in place until the site is stabilized.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.5. There were none. Chairman Lees asked for Board questions. Chairman Lees asked what the percentage of grade was from the retaining wall to the bottom of the stairs. Mr. Rines responded 43%. Ogren confirmed that only one tree will be removed. Mr. Rines responded yes, only one 10ö aspen.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.5.

The board reviewed the special exception worksheet for Article 3 Section 304.6.5 regarding confirm prior approval to allow the removal of trees for construction of steps, drainage swale, retaining wall and level lip spreader.

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.5 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per Plan ðAmendment to Shoreland Approval 2010-00723 Shoreland Redevelopment Plan for Frank and Kathryn Lalumiereö revision date 04/11/2013 prepared by White Mountain Survey and Engineering.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees invited **Case #49-9-13 David K. & Denys D. Caplan** to approach the board with a request for a special exceptions under Article 3 Sections 304.6.3.1 and 304.6.5 and variance under Article 3 Table 304.5 to construct a perched beach with associated tree and stump removal; repair existing walkway and porch within 75ø of Loon Lake.

Barry Keith, Agent, approached the board to discuss the case without the applicant. The property at 89 Loon Lake Road has decks and porches that he been there since the 1960ø. Little work has been done to the property over the years.

The trees to be cut are leaning toward the building, have woodpecker holes and are growing into power lines.

	<u>Current points</u>	<u>Points after cut</u>	
Grid #1	339.5	314.5	meets requirements
Grid #2	48	48	grid with house
Grid #3	171	126	meets requirements
Grid #4	150.5	150.5	meets requirements

The work on the building will not change the size or location. The deck and porch has old footings so new ones will require earth disturbance. Stumps, old and new, need to be removed to allow for a stable foundation. Need to get into the property with an excavator; an access area has been planned that is away from the septic.

The applicant would like to rebuild the steps and create a perched beach. The beach will be 30'x10' at 60' from the Acton boundary. The steps will be rebuilt in the same footprint with better materials. A silt fence will be employed along the whole width of the property until stabilized.

Niiler asked if the stumps will be ground. Mr. Keith responded the ones at the beach and decks will be removed, others ground. Chairman Lees asked about the access area for the machine. Mr. Keith assured it will be re-vegetated.

Chairman Lees asked for public comments.

Thomas Culbertson, abutter, expressed his concern about the proximity of the construction in regards to the lake. Mr. Culbertson brought to the Board's attention a natural spring located at the base of the stairway. These were his main concerns. Mr. Culbertson suggested using block or bar granite as opposed to pressure treated wood for the construction of the stairs keeping the integrity of the spring in mind.

Chairman Lees asked for abutter or public comment regarding Article 3 Table 304.5. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Table 304.5.

The board reviewed the variance worksheet for Article 3 Table 304.5 to construct a perched beach:

1. 5 to 0
2. 5 to 0
3. 5 to 0
4. 5 to 0
- 5Ai. 5 to 0
- 5Aii. 5 to 0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested variance from Article 3 Section 304.5 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per Plan "Shorefront Improvement Plan David K. and Denys D. Caplan" dated 04/03/2013 prepared by B.H. Keith Associates.

2. Walkway material shall not be pressure treated lumber.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.3.1 There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.3.1.

The board reviewed the special exception worksheet for Article 3 Section 304.6.3.1 regarding erosion control:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.3.1 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per Plan "Shorefront Improvement Plan David K. and Denys D. Caplan" dated 04/03/2013 prepared by B.H. Keith Associates.
2. Plan to be submitted by 05/13/2013 with detail of silt fence.
3. Erosion control shall in place prior to construction and shall remain in place until the site is stabilized.
4. Temporary impacted area shall be stabilized with grass.
5. Shall successfully obtain Wetland approval with copy sent to board.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees asked for abutter or public comment regarding Article 3 Section 304.6.5. There were none. Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 3 Section 304.6.5.

The board reviewed the special exception worksheet for Article 3 Section 304.6.5 regarding erosion control:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0



K. 5-0

L. 5-0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.5 of the Town of Freedom Zoning Ordinance be granted with the following condition:

1. Per Plan "Shorefront Improvement Plan David K. and Denys D. Caplan" dated 04/03/2013 prepared by B.H. Keith Associates.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees invited **Case #33-01-13 Anthony W. Butler** to approach the board with a request for a special exception under Article 3 Section 304.6.3.1 and variance under Article 3 Table 304.5 and Article 1 Section 103 to construct a retaining wall within the setback that requires erosion control measures.

Mr. Butler explained to the Board that he purchased the property in November of 2012. He'd like to build a retaining wall at the base of the slope. The wall would be 40' long, set with a 6" reveal at no more than 3' high. Mr. Butler will install a silt fence and it will all be done by hand.

Ultimately Mr. Butler's plan is to try and stop the erosion of debris to the beach and to create a boundary between the beach and hill slope.

Chairman Lees informed the applicant that a retaining wall would also require approval from the State of New Hampshire.

Delineation could be obtained for between the beach and slope with plantings. There is a list that the State of New Hampshire recommends for this purpose. Mr. Butler will attempt to create delineation with plantings; he'd like to request to withdraw this application.

Motion by Ogren, seconded by Cupka to accept Mr. Butler's request to withdraw his application without prejudice. The motion passed unanimously.

Chairman Lees invited **Case #23-7-13 Mark Goldstein** to approach the board with a request for a special exception under Article 3 Section 304.6.3.1 and variance under Article 7 Section 706.3 to replace existing house on same footprint with an increase in height within the setback that requires erosion control measures.

Mark McConkey, Agent and Brian Nolan, builder, approached the board. Mr. McConkey gave a history of this property's 2012 application. A permit was issued for renovations from the Town. During the renovations it was discovered that the building was not sound and it was demolished with the exception of the deck and stairs. The rebuilding plan included a height increase which requires a variance.

Mr. McConkey sited that several homes to either side have two stories and considers this request in keeping with the neighborhood, the property is at the end of the road and will not block any views.

The new construction will have the height of the new structure at 23ø6ö; the old home was 13ø6ö to the peak.

Chairman Lees, Cupka and Stephan had no concern with the 10øheight increase request.

Chairman Lees asked if a shore land permit has been obtained. Mr. McConkey responded no, not sure as though it is necessary. Chairman Lees asked that either it be obtained or a letter be sent to the Board explaining that it is not necessary.

The request for erosion control under Section 304.6.3.1 already has approval through Case #23-7-12.

Chairman Lees asked if there were any public comments. There were none. Chairman Lees asked if there were any comments or questions from the Board, there were none.

Chairman Lees closed the hearing to public comments regarding Article 7 Table 706.3.

The board reviewed the variance worksheet for Article 7 Table 706.3 to replace existing house on same footprint with an increase in height within the setback:

1. 5 to 0
2. 5 to 0
3. 5 to 0
4. 5 to 0
- 5Ai. 5 to 0
- 5Aii. 5 to 0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Variance from Article 7 Section 706.3 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per plan øZBA Plot Plan For: Mark Goldstein Sunset Road Tax Map 23 Lot 7 Soil NaBö dated 04/01/2013 prepared by Mark McConkey.
2. Height of structure shall not exceed 24ø
3. Receipt of letter or approval from the NHDES Shoreland Bureau, if necessary.
4. Previous approval for erosion control (Case #29-7-12) shall remain in place until all construction is completed and site is stabilized.
5. Existing footprint shall not change or become larger than existing.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

The meeting adjourned at 10:22 pm.