

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

Freedom Zoning Board of Adjustment: **May 28, 2013**

Present: Chairman Scott Lees; Vice-Chairman Craig Niiler; Karl Ogren; Jake Stephan; John Quigley, alternate; Tim Cupka arrived at 8:15

Others Present: Linda Farinella, Recording Secretary

Chairman Lees called the meeting to order at 7:00 pm.

During this meeting the following cases will be heard:

- Case #30-1-3-13 Donald Silke**
- Case #30-21-13 Gabrielle Fecteau**
- Case #22-20-13 Christopher Mulcahy**
- Case #32-26-13 Grant and Pirkko Anderson**
- Case #42-20-1-13 W.E.P. Family Realty Trust**
- Case #23-17-13A 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 Quigley, seconded by Ogren to accept the minutes of the April 30, 2013 as written. The motion passed unanimously.

Chairman Lees invited **Case 30-1-3-13 Donald Silke** to approach the board with a request for a special exception under Article 3 Section 304.6.5 to cut a tree within the shorefront setback at the property located at 331 Huckins Road; Tax Map #30 Lot #1-3.

Chairman Lees read the Freedom Conservation Commission's review:
FCC Concerns

- Would like the applicant to be aware the tree cannot be dropped into the water and the stump must be left intact.

Don Silke explained that there is a damaged tree that has been washed out and is leaning. When it falls it will likely cause damage to the property and would take out three or four more trees with it. Mr. Silke intends to leave the stump and simply clip off any roots that are unsafe.

Members of the Board that viewed the site were of agreement with the applicant's opinion of the poor condition of the tree. Stephan noted that the cut plan shows that even with the tree removed the property still meets the required tree points.

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 tree cutting:

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

Motion by Chairman Lees seconded by Stephan 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. Stump to remain, roots in beach area can be removed.

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

Chairman Lees invited **Case #30-21-13 Gabrielle Fecteau** to approach the board with a request for a special exception under Article 3 Section 304.6.5 and a variance under Article 3 Section 304.6.5.2 to cut trees and remove stumps in the shorefront at the property located at 315 Huckins Road; Tax Map #30 Lot #21.

Chairman Lees read the Freedom Conservation Commission's review:
FCC recommends:

- No tree stump removal of (Trees D1-D2) in the shorefront exception tree R1 it's OK to remove the stump.
- No root removal of any tree with the exception of tree R1.
- No fertilizers used on grassy areas.
- What is the hazard for trees C1-C4?

Mr. and Mrs. Fecteau approached the Board with photographs of their property that showed the trees. The grids submitted meet the required point values.

In Quadrant #4 tree R1 is the only tree that they are requesting that the stump be removed as it is where the new water line will be placed. The other trees to be removed (C5 ó C9) are dying or too close to the house. Mr. Fecteau added that the roof on the house had just recently been replaced. They will be leaving many trees and plan to either leave or grind down each stump.

In Quadrant #1 trees D1 and D2 are along the water with only the tap root keeping them in; they are leaning and dangerous. C1 ó C4 will have the stumps left.

Chairman Lees noted that a request for a variance was submitted. The need for a variance could not be found. Gabrielle Fecteau respectfully requested to withdraw her

request for a variance. The Board unanimously accepted the withdrawal without prejudice.

Chairman Lees asked for comments from abutters and public.

Mr. Richard Eastman, abutter, stated that he is in favor of the project and that it could only enhance the property. There were no other comments.

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 tree cutting:

- 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 submitted as part of the application.
2. Tree R1 is the only tree allowed earth disturbance.

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

Chairman Lees invited Case #22-20-13 Christopher Mulcahy to approach the board with a request for a special exception under Article 15 Sections 1503 and 1504 to have a home office for a wholesale automobile dealer at 13 Intervale Avenue; Tax Map #22 Lot #20.

Mr. Mulcahy explained to the Board he needs to acquire approval from the town as a requirement for this State of NH wholesale license. The minor home occupation section of the zoning ordinance does not fit as a state permit is necessary, therefore, he is asking for a major home occupation. Mr. Mulcahy stated there will only be a home office, no vehicles, no customers, no signage and no exterior evidence.

Ogren asked Mr. Mulcahy why he needs a license. Mr. Mulcahy stated that the state requires them for retail or wholesale automobile sales. Niiler asked if he would have any employees. Mr. Mulcahy responded that he will not have any employees, only himself; it is an internet based business.

Mr. Mulcahy noted that he has a letter from the Mountview Association with their approval conditioned on the town's approval.

Chairman Lees asked for comments from abutters or public. There were none.
Chairman Lees asked for Board questions. There were none.

Chairman Lees closed the hearing to public comments regarding Article 15 Sections 1503 and 1504.

The board reviewed the special exception worksheet for Article 15 Sections 1503 and 1504:

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

Motion by Chairman Lees seconded by Niiler that based on the forgoing findings of fact, the requested Special Exception from Article 15 Sections 1503 and 1504 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. No storage other than personal vehicles on site.
2. No customers or employees on site.

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

Chairman Lees invited **Case #32-26-13 Grant and Pirkko Anderson** to approach the board with a request for special exceptions under Article 3 Section 304.6.3.1 and 304.6.5.2 and variances under Article 3 Section 304.5 and Article 7 Section 706.2 and 706.3 to construct a new house, garage and gazebo; expansion of existing shed and cabin at 91 East Danforth Road; Tax Map #32 Lot #26.

Chairman Lees read the Freedom Conservation Commission's review:
FCC concerns:

- The bunkhouse and its proximity to the shoreline.
- The creation of impervious roof area on the gazebo, bunkhouse & shed and suggests the installation of an infiltration ditch for roof run-off.
- Ensure septic is sized to include bunkhouse bedrooms
- No stump removal of cut trees.

Mr. James Rines of White Mountain Survey and Engineering, Agent, presented to the board the plan for a 30~~0~~40~~0~~ home, a 24~~0~~24~~0~~ garage, the expansion of a seasonal camp, raising an existing shed to allow for a concrete foundation and adding a 12~~0~~ diameter gazebo at the point.

Mr. Rines stated that the current lot coverage is 0.8%; if all requests are approved the lot coverage will be 4.8% which is under the 10% allowed coverage.

Mr. Rines explained his requests. The variance from section 304.5 is to allow placement of a gazebo at 20.6~~0~~ from the lake. The variance from section 706.2 is to

expand the existing cabin for a bunkhouse resulting in a setback of 25.9ø versus the existing 38.7ø with the requirement being 75ø. The variance from section 706.3 is to allow the vertical expansion of the existing shed by 18-24ø to construct a solid foundation and allow for storage beneath.

The two special exception requests from Article 3 Sections 304.6.3.1 and 304.6.5.2 are for tree cutting and erosion control. Each grid of 50ø x 75ø will have enough points after cutting. The silt fence for erosion control will be installed around the bunkhouse, shed, proposed house and leach field location; the gazebo will be on blocks. The outhouse will be removed.

The shed shall have the same footprint, it will be raised up with a new foundation and new building keeping the same shape and size. The height will change from 8ø8½ø to approximately 12ø high at top end.

The bunkhouse which was the cabin will have the kitchen removed, no cooking facilities, no water, no sanitary facilities, but it will have heat. The height will be raised with a new roofline.

Chairman Lees asked if shoreland approval has been received. Mr. Rines responded not yet, but the gazebo is compliant with the state, the shed and bunkhouse are accessory buildings and can be at 20ø from water so no problem is anticipated.

Niiler and Ogren were against the idea of making the bunkhouse larger, but were open to the suggestion of encroaching out only as far as the chimney then the building would only be 36ø from the water at its closest.

Tim Cupka joined the meeting.

Mr. Rines explained that the gazebo would be on blocks. Ogren asked if the gazebo is in place of a beach. Mr. Rines stated no. It was asked if the applicant would forgo the beach for the gazebo, the applicant stated that the gazebo is not that important. Chairman Lees suggested that if the gazebo request is withdrawn to be sure the tree cut plan is revised.

Chairman Lees asked for abutter comments. Sue Brown, abutter, asked if the bunkhouse was being taken into consideration regarding the septic system. Mr. Rines stated that the size of the septic took the bunkroom into consideration as a bedroom, adding that there will be no cooking or plumbing facilities, just bunk beds.

Jean Marshall, public, wanted clarification. Mrs. Marshall asked if the bunkhouse will be a dwelling. Mr. Rines stated no, the house will be the only dwelling.

Motion by Chairman Lees, seconded by Ogren to continue this hearing to the June 25th meeting with a submission deadline of June 10th. The motion passed unanimously.

Cupka took his place as a regular member, Quigley stepped aside as an alternate.

Chairman Lees invited **Case #42-20-1-13 W.E.P. Family Realty Trust** to approach the board with a request for special exceptions under Article 3 Sections 304.6.3.1 and 304.6.5 and a variance under Article 3 Section 304.5 to construct a home with tree cutting and erosion control on Packard Drive; Tax Map #42 Lot #20-1.

Chairman Lees read the Freedom Conservation Commission's review:
FCC concerns:

- Leaving tree stumps after tree removal
- Creation of impervious roof area for the house and suggests the installation of and filtration ditch for roof run-off.

Mr. Mark McConkey, Agent, approached the board to explain that the potential buyer of the vacant property proposes to build a 32'x40' home. The home meets the building setbacks, the septic meets the 125' setback. The proposed lot coverage will be less than the allowed 10%. In keeping with the neighborhood the proposed home will be log style with an existing driveway cut that meets the 125' from the water.

Mr. McConkey explained that the erosion control detail shows the silt fence and hay bails on the plan.

Mr. McConkey showed three grids on the tree cutting plan:

- Grid #1 has 300 points; after cut leaving 110 points
- Grid #2 has 316 points; after cut leaving 117 points
- Grid #3 has 119 points; after cut leaving 76 points noting Grid #3 is about half the size of the other grids.

Mr. McConkey passed out pictures with views from the proposed home. The potential new owner would like to have a view that is less obstructive. The owner would go forward in the future for a wetland permit to replace the existing wall at the water.

Mr. McConkey's client is asking for a larger than 6' cut to the water but will not be cutting swath to the water. Chairman Lees asked how wide will it be. Mr. McConkey responded 32'. Chairman Lees asked for his justification. Mr. McConkey responded that they will be still be shielded from the neighbors and there will still be enough points remaining. Chairman Lees said he had a hard time with the 32' opening request; Cupka did not have a problem as the points are met.

Ogren asked if there were to be trees taken outside of the 75'. Mr. McConkey responded only three will be taken for the house.

Chairman Lees asked for comments from abutters in favor of the project. There were none.

Chairman Lees asked for comments from abutters opposed to the project. Mr. David Trook, abutter, questioned the break down of the grids. The Board explained it is based on a lot that is not square.

Mrs. Debra Palacio, abutter, expressed her concern that the leach field is within the 30' setback. Chairman Lees explained that the leach field is allowed to be within the setback.

Mr. McConkey added that it also meets the required distance from Mrs. Palacio's well.

Mrs. Jean Marshall, public, also questioned the break down of the grids as per Article 3 Section 304.6.5.2a. Mr. McConkey stated it is broken down based on the state standards.

Mrs. Marcia Trook, abutter, expressed her concern of the request for 32' versus 6' of opening. Other new homes in the area have respected that and kept a very natural lake view. Five fold is outside of what has been respected by others.

Mr. Ian Marshall, public, commented that cutting 65% of the trees is not within the spirit of the ordinance.

Chairman Lees explained that the intent of the grid system was to mimic the state idea, aside from poor wording in the ordinance the intent has been shown by the applicant with 50'x75' boxes.

Niiler agreed that it is a valid point that other new homes in the area have conformed with the 6' opening. Cupka asked how many new home have been built in the area. Niiler stated two or three in recent years.

Mr. McConkey noted that the ordinance had changed only a year ago and many parcel have a larger than 6' view. Mr. McConkey presented a plan that showed the 30' area broken into corridors at less than 6' wide each. The wooded area is predominantly pine so the look doesn't generally change.

The Board agreed to move forward with the request for a special exception for erosion control and continue the tree cutting request to the June meeting. The Board asked Mr. McConkey to submit the new tree cutting plan showing both trees to remain and trees to be cut on the same plan.

Motion by Chairman Lees, seconded by Niiler to continue the request for variance from Article 3 Section 304.5 to the June 25th meeting with a submission date of June 10th. The motion passed unanimously.

Chairman Lees commented that the plan is made to the intent of the regulation and Niiler agreed suggesting some clarification of the ordinance.

Mrs. Jean Marshall, public, noted again that there seems to be a problem with the ability to make the boundary marker relate on the plan; it does not look like the boundary on the Trook side is correct. Mr. McConkey suggested that his markers may have caused some confusion but you can be assured that the house fits within the setbacks using Alan Fall's markers.

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:

- A. 5-0
- C. 5-0

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

Motion by Chairman Lees seconded by Niiler 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. Shall conform to plan titled "WEP Family Realty Trust" prepared by Mark McConkey dated 05/05/2013.
2. Erosion control shall be installed prior to construction and remain in place until site is stabilized.

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

Chairman Lees invited **Case #23-7-13A 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 3 Section 304.5 to replace a deck in-kind and construct roof over deck at 28 Sunset Road; Tax Map #23 Lot #7.

Chairman Lees read the Freedom Conservation Commission's review:
FCC concerns:

- Increased square footage of impervious roof area and is concerned with roof run-off. Suggest the installation of an infiltration ditch for roof run-off.

Chairman Lees gave a history of this property this being the third application submitted for this project. The last application did not address the porch within 50' of the lake.

Mark McConkey, Agent, explained that the applicant would like to replace the existing deck in-kind in a place that it has always been. The deck is in poor shape. The intent is to carry the roof over the porch; no walls will be constructed, it will not be enclosed.

The request for erosion control under Section 304.6.3.1 already has approval through Case #23-7-12. Mr. McConkey respectfully requested to withdraw this request for a special exception from Article 3 Section 304.6.3.1.

Motion by Chairman Lees, seconded by Niiler to accept without prejudice the request for withdrawal. The motion passed unanimously.

Mr. McConkey addressed the FCC concerns noting that the project has been approved by the state and infiltration trenches are planned.

Ogren asked if the deck will be at the same elevation as the old and if the roof is going to be different. Mr. McConkey responded that the deck will be 6" higher and the roof will follow off the new home roof.

Board correspondence with the State of NH DES confirmed that a state permit is not necessary.

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 3 Table 304.5.

The board reviewed the variance worksheet for Article 3 Table 304.5 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 3 Section 304.5 of the Town of Freedom Zoning Ordinance be granted with the following condition:

1. Shall conform to plan titled "Plot for Zoning Discussion" prepared by Mark McConkey, dated 05/09/2013.

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

Mr. Dennis Anderson expressed interest in serving as an alternate member of the Board. The Board met with Mr. Anderson. A letter will be send to the Board of Selectmen requesting that Mr. Anderson be appointed to the Board as an alternate for a three-year term.

The meeting adjourned at 10:07 pm.