

Zoning Board of Adjustment
PO Box 227
Freedom, NH 03836

Freedom Zoning Board of Adjustment: **May 27, 2014**

Members Present: Chairman Scott Lees; Vice-Chairman Craig Niiler; Karl Ogren; Tim Cupka; John Quigley, Alternate; Denny Anderson, Alternate

John Quigley will be sitting in for Jake Stephan.

Others Present: Linda Farinella, Recording Secretary; Ned Hatfield, Zoning Officer

Chairman Lees called the meeting to order at 7:01 pm.

During the meeting the following cases were heard:

Case #32-33-14 Wittrock Revocable Trust

Case #23-57-4-14 Elise Pydynkowski

Case #22-81-14 James Reichert & Marcia Befera

Case #46-3-14 Timothy G. Reed Revocable Trust and Jeffrey Reed

Case #36-3-1-14 Edward J Hennessy and Harriet J Fishman

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

Vice-Chairman Niiler introduced the Board to the public.

Motion by Cupka, seconded by Vice-Chairman Niiler to accept the minutes of the April 22, 2014 as written. The motion passed with Desmarais abstaining.

Chairman Lees invited **Case #32-33-14 Wittrock Revocable Trust** to approach the board with a continued request for a special exception under Article 3 Section 304.6.5.3 and a variance under Article 4 Section 406 of the zoning ordinance to replace a failed septic within 125' of a wetland and tree cutting in the shorefront district at 37 East Danforth Road.

Mark McConkey, Agent, explained that he has submitted a tree count and erosion control details. There will be ten trees cut which still leaves the 100 points required.

Niiler noted that last month the application would have been appropriate to approve but lacked the necessary tree grid. Niiler was fine with the submission and Cupka agreed.

There were no abutters or public comment.

The board reviewed the variance worksheet for Article 4 Section 406:

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 Niiler that based on the forgoing findings of fact, the requested Variance from Article 4 Section 406 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. System must be approved by NHDES Subsurface Bureau.
2. Per plan titled "Wittrock Rev Trust" dated May 11, 2014.

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

A special exception for Article 3 Section 304.6.3.1: erosion control was not requested. The agent will submit the abutter notice fees and a request for a special exception.

The board reviewed the special exception worksheet for Article 3 Section 304.6.5.4:

- 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 304.6.5.4 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Per plan titled "Wittrock Rev Trust" dated May 11, 2014.

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

Chairman Lees invited **Case #23-57-4-14 Elise Pydynkowski** to approach the board with a continued request for a variance under Article 3 Section 310.1.5 of the zoning ordinance to build a house, garage, shed and porous porch covering more than 10% of the lot on Deer Run Road.

Kevin Pydynkowski, owner and Mark McConkey, agent, approached the board noting that at the previous meeting the plan had a proposed 3-car garage and 14% lot coverage. The concerns of the abutters were taken into consideration and the applicant has now proposed a smaller home, 11% lot coverage, a smaller garage that will have entry from the rear of the house. A retaining wall will be installed to handle the wider swing of the driveway necessary for access to the garage.

Niiler noted that these changes reflect what was discussed at the previous meeting. Cupka agrees. Chairman Lees noted that the house and garage meet the setbacks, but questioned the retaining wall and patio. Niiler spoke up stating that the applicant was lead to believe that the patio would not be considered a structure based on state standards.

Chairman Lees asked for abutter comments.

Glenn Fogarty, abutter at 123 Deer Run Drive, questioned if the 1 1/2' overhang could later during construction change to part of the structure, adding square footage. Chairman Lees responded

that they would have to come back to the Board. Mr. Fogarty expressed his concern of snow removal and if gutters were proposed.

Mr. Fogarty stated that he is not in favor of the project. If they are having a hard time entering the garage then the house is too big for the lot. Mr. Fogarty requested that an easement be submitted when the foundation is ready to go to verify setbacks. Chairman Lees stated that if they build within the setbacks it would be a violation.

There were no other public or abutter comments.

McConkey stated that room was left for snow removal. He also noted that the configuration of the garage's entry was moved to the back of the house because of an abutter concern. McConkey also noted that if the patio is an issue the applicant is willing to remove it from the proposal.

There were no member comments or questions.

Mr. Fogarty asked to add that he has not heard a hardship regarding this application. Mr. Fogarty also added that he is not here to hurt the applicant.

McConkey asked that the patio be removed from the application.

Ogren suggested that if the overhangs were changed from 1½' to ½' it would ultimately bring the percentage of lot coverage to as low as 10.3%. The applicant agreed to a ½' overhang. The Board suggested the applicant find a way to meet the 10% coverage.

McConkey and Mr. Pydynkowski requested to withdraw their application. The request was unanimously approved.

The applicant will return with a request for a variance to cover the retaining wall. No denial from the zoning officer is necessary and the application fee will be waived.

The Board recessed from 8:11 to 8:15pm.

Case #22-81-14 James Reichert & Marcia Befera Applicant seeks an appeal for variances under Article 3 Section 310.1.5 and Table 304.2 of the zoning ordinance: To construct a garage within the setback and cover more than 10% of the lot at 27 Deer Run Drive.

Mr. James Reichert approached the Board and explained that he had a temporary 10'x20' unsightly garage that collapsed under snow load this winter. The garage placement is restricted because of the location of the septic. It would be placed within the setback and cover more than 10% of the lot. Two or three trees would be removed. The shed on the lot will be removed. Mr. Reichert presented photographs of the neighboring lots.

Chairman Lees stated he understands why the garage would be located there but seems to think that with the removal of the shed and a reduction in the size of the garage, the 10% lot coverage could be met. Anderson agreed. Ogren and Niiler were of the same thought.

There were no abutters or public present for comment regarding this case.

Motion by Chairman Lees, seconded by Ogren to continue this application to the June meeting. The applicant will submit a new plan that conforms to the 10% lot coverage; only the sideline issue will need to be addressed. The motion passed unanimously.

Case#46-3-14 Timothy G. Reed Revocable Trust and Jeffrey Reed Applicant seeks an appeal for a special exception under Article 3 Section 304.6.3.1 of the zoning ordinance: To rebuild/replace in-kind existing stone retaining wall within the 75ø of Loon Lake requiring erosion control at 31 Freedom Shores Road.

The Freedom Conservation Commission reviewed this application and stated no concerns.

Barry Keith of B.H.Keith Associates, agent, explained that this is an existing lot of record on Loon Lake. It is steep with a loose stone retaining wall 40ø wide x 2ø high x 2½ø deep. An old wood road will be used as access for construction; a rubber tracked excavator will be used.

There will be two small trees cut which fall under the zoning officer's jurisdiction. Points will go from 172 to 171 and then 153 to 152 in the respective quadrants.

Chairman Lees asked if there will be any change to the footprint. Keith stated no, just asking for erosion control.

Cupka suggested that natural stone be used. Keith agreed and hopes to use as much of the stone from the existing wall as possible.

There were no abutters or public comment made.

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 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 conditions:

1. Additional stones needed for construction shall be constant in appearance to existing stones.
2. Per plan titled "Retaining Wall Restoration Plan, Timothy G. Reed Revocable Trust of 1999 and Jeffrey Reed" dated May 2, 2014.
3. Wetlands approval shall be provided.

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

Case #26-3-1-14 Edward J Hennessy and Harriet J Fishman ó Applicant seeks an appeal for a special exception under Article 3 Section 304.6.3.1 and variances under Article 3 Section 310.1.5 and Article 7 Sections 706.2 and 706.3: To demolish the existing structure and construct a new home exceeding the 10% allowable lot coverage, increase the height and be within the sideline setback with erosion control at 384 Pequawket Trail.

Chairman Lees read aloud the concerns of the Freedom Conservation Commission.

Mr. Hennessy and Ms Fishman gave a history of the property and explained their proposed project.

The square footage of the home will increase by only 28 square feet, which is a 0.15% increase. The present roof height limits the use of the second floor, so a 5.5ø increase is requested. There will be no impact on abutters as there is no one behind the home. The house will be moved back which will improve the neighborsø views. A cellar hole of 8ø will be constructed, there are no drainage issues, and a silt fence will be used for erosion control.

An adjustment was made to the location of the foundation so two trees will be able to be kept and not cut down. The home width was reduced by 6ø and rotated.

Ogren asked about the septic. Mr. Hennessy responded that the septic was put in in 2002; it is a 3-bedroom that works fine. Chairman Lees would like assurance that the septic system will still work out. Mr. Hennessy explained that they can relocate the tank with only a design change. Chairman Lees would still like a septic professional to show what can be done within the footprint.

There were no abutters or public present for comments.

The Board asked the applicant to submit to the board a revised plan that includes but is not limited to the list of the 10% calculation, and a letter from the septic designer stating the requirements can be met. This shall be submitted by June 9th for the June 24th meeting.

A straw pole taken showed a high likely hood that all requests will be granted.

Motion by Chairman Lees, seconded by Cupka to continue this application to the June meeting. The motion passed unanimously.

The Board will meet with the Planning Board on September 18th instead of the originally agreed upon date of October 16th.

The letter from the Zoning Officer regarding structures shall be added to the June agenda.

Meeting adjourned at 9:30 pm.