

## **Zoning Board of Adjustment**

**August 27, 2019**

### **Minutes**

**Members Present:** Scott Lees, John Krebs, Karl Ogren, Craig Niiler, Jake Stephan, John Quigley(A)

**Members Absent:**

**Others Present:** Janice Zecher, Recording Secretary

Meeting called to order at 7:00pm by Scott Lees. Scott introduced the board members to the public, and explained the rules and procedures. There was a quorum present of 5 members.

The minutes from July 23, 2019 were reviewed by the board. A motion was made by Scott Lees to accept the minutes with the following change: Page 2, seconded by Craig. All were in favor.

#### **Case# 26-5-19 The View at Lake Ossipee Family, LLC**

Applicant seeks an appeal for a Variance under Article 3, Table 304.5, side setbacks, A Variance under Article 3, Section 304.6.6.2(a), Maintenance of a Waterfront Buffer (D) (iv) Segment point total must equal or exceed 100 points. Special Exception under Article 3, Section 304.6.4.1 Erosion Control, A Special Exception under Section 304.6.6.4, tree cutting greater than 12.5% slope between 75 and 300 feet of reference line, A Special Exception under Section 304.6.7.3, Exceeds 10% impervious area on lot of record at Map 26, Lot 5 at 7 Cone Drive. The applicant wishes to add one bedroom, one bath, den storage, and unfinished second floor.

The board received a written request from Mr. Jones dated August 22, 2019 to withdraw his first application dated 03/18/19 without prejudice. A motion was made by Scott to accept the withdrawal without prejudice, seconded by Karl. All were in favor.

#### **Case #37-7-19 Denise Savoie & Lindsey Archila**

Applicant seeks an appeal for a Variance under Article 3, Table 304.5 front setback, A Special Exception under Article 3, Section 304.6.4.1 Erosion Control, and a Special Exception under Section 304.6.6.2 tree cutting within 75' of reference line at Map 37, Lot 7, West Bay Road. The applicant wishes to construct a 3bedroom house, well, driveway, state approved septic system. Trees to be cut to get the proposed structures installed.

On August 18<sup>th</sup>, Lindsey Archila and Denise Savoie had submitted a request to withdraw their original application dated 04/04/19. Scott made a motion to accept the withdrawal without prejudice, seconded by John Krebs. All were in favor.

**Case #37-7-19 Denise Savoie & Lindsey Archila**

Applicant seeks an appeal for a Variance under Article 3, Table 304.5 front and side setbacks, and a Special Exception under Article 3, Section 304.6.4.1 Erosion Control at Map 37, Lot 7, West Bay Road. The applicant wishes to construct a 2bedroom house, well, driveway, state approved septic system.

Lindsey Archila and Denise Savoie presented a new application dated 08/10/19. They reviewed the application and plot map with the board. Abutters present, Nancy Trombini had no comment or issue with the application. The board had no comments or concerns about the application. The board liked the erosion control method of building a berm and asked Ms. Archila if she would check periodically to be sure the method is working.

The board reviewed the **Variance Worksheet for Article 3, Section 304.5** as it pertains to front and side setbacks.

- |                |                        |
|----------------|------------------------|
| 1. Carried 5-0 | 4. Carried 5-0         |
| 2. Carried 5-0 | 5. A. (i) Carried 5-0  |
| 3. Carried 5-0 | 5. A. (ii) Carried 5-0 |

Summary of the facts of the case discussed at the public hearing:

- 1. House is located beyond the 75’ waterfront setback. This causes the front yard infringement.**
- 2. The applicant has addressed all concerns of the ZBA from previous meetings.**
- 3. No trees will be cut.**
- 4. Proper installation of mulch berm is detailed on the plan.**

Based on the foregoing findings of fact, the requested variance from **Article 3, Section 304.5** as it pertains to front and side setbacks in the Town of Freedom Zoning Ordinance be granted with the following conditions:

- 1. Per plan titled Variance Plan (VP-1 Sheet 1 of 1) for Lindsey Archila & Denise Savoie dated 08/01/19, revised 08/28/19**
- 2. Variance plan, (replace proposed condition plan) replace pc-1 with vp-1.**
- 3. Add “West” to Bay Road in the location plan.**
- 4. Correct abutter’s name to “Vater”**
- 5. Provide foundation certification by a licensed land surveyor**
- 6. Set two grade stakes on property line 25.2’ to covered deck.**

The board reviewed the Special Exception Worksheet for **Article 3, Section 304.6.4.1** as it pertains to **Erosion Control**.

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

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Based on the foregoing findings of fact, the requested Special Exception from **Article 3, Section 304.6.4.1** as it pertains to erosion control in the Town of Freedom Zoning Ordinance is granted with the following conditions:

- 1. Per plan titled Proposed Conditions Plan (PC-1, Sheet 1 of 2) for Lindsey Archila & Denis Savoie dated 08/01/19, revised 08-28-19.**
- 2. Erosion control shall be installed prior to any earth disturbance and shall remain in place until site is stabilized.**

When the office receives the revised plan, Janice will send it to Scott for final review before decision is released. Ms. Archila will send 2 full size plans for the file.

**Case #24-7-2-19 Stephen and Charlene Becht** *continued from August*

Applicant seeks an appeal for Special Exceptions under Article 3, Section 304.6.6.2 Tree Cutting within 75' of reference line, and also under Article 3, Section 304.6.4.1 Erosion Control. Applicant wishes to cut trees to provide a limited view of the lake and a walkway to the water.

Mark and Jake McConkey presented the application as agents for Mr. & Mrs. Becht who were present at the meeting. The house was built with ZBA approval in 2018. It was noted that the condition that a foundation certification had not been submitted.

After reviewing the plan, the board asked that the following corrections/revisions be made before continuing.

1. Both names must be on the application and both must sign application as well as assignment of agent.
2. Erosion control information on plan must be a minimum of 8 pt font. It is currently too small to read.
3. For erosion control, use a silt sock instead of fencing because of boulders.
4. Scale must be 1" = 30'
5. Plan size = "C"
  
6. Review tree cutting plan so that the number of trees and values are the same on the plan and the blowup.
7. Add the value of each tree in chart form. Size and point value can be done on a spreadsheet.
8. Show the trees to be removed and the trees that will remain.

Mark and Jake were reminded that the requirements are clearly stated on the applications and that the board has reviewed these requirements many times.

Scott made a motion to table further discussion until these changes are made, seconded by John Krebs. All in favor. This application is continued to September.

**Other Business:**

Scott reminded the board that September 19<sup>th</sup> is the joint meeting between the Planning Board and ZBA. John Karl and Scott will be at the meeting.

There have been complaints about a house being used as an Air B&B, or VRBO. Because this house is not in the village, there is no zoning violation. Don reviewed the differences between a tourist home and an Air B&B. Freedom has numerous houses being used in this manner and the only restrictions are in the two village districts. In the village district, a house can be used as a tourist home but not as an Air B&B or VRBO.

Peter Malia, the ZBA's attorney will be at the September 24<sup>th</sup> meeting. Scott asked the board for examples of questions that have come before the board that they would like clarification on. The list is as follows:

1. Provide a synopsis of any statutory changes over the last 5 years as it affects the ZBA.
2. When does a case have to be heard, 30 days or 45 days.
3. When does the time start counting down.
4. How long does a variance or special exception last. If it is currently 2 years, when did it change?
5. Can you provide a timeline of dates that this rule had a 2 year deadline vs no deadline. (Do we need to note the file of anyone who was approved during a 2 year deadline period)
6. Can the ZBA or Town put a time limit on variances or special exceptions
7. Can you "cherry pick" pieces of an approval. (cut trees but not build the house)
8. Can you define a structure, dwelling, and building.
9. Who determines if an application is complete
10. If both parties sign an assignment of agent, do they need to sign the application too.
11. How should the town follow through on conditions.

Janice will send the list to Peter Malia ahead of the meeting so he has time to research. There being no further business, Scott made a motion to adjourn, seconded by Karl. The meeting adjourned at 8:45pm.

Respectfully Submitted,  
Janice Zecher