

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

Freedom Zoning Board of Adjustment: **April 27, 2021.**

Present: Chairman Scott Lees, Karl Ogren, Jacob Stephen, Denny Anderson (A), John Krebs, Jeff Fongemie (A)

Absent: Zoning Officer Gary Williams, Vice Chairman Craig Niiler

Public: Mark & Jake McConkey, John Panagiotakos, Steve Becht, Julie Haskell, Stephen Haskell, Allen Fall.

During this meeting the following cases will be heard:

Case # 01-01-21 Lance and Devin Bolduc

Case # 45-12-21 Julianne & Stephen Haskell

Case # 24-13-21 Red Top Realty Trust / DJH Investments Trust

Case # 30-7-1-21 Peter McCarriston/John Thompson & Jane Nudd/James Thompson & Jo-Anne Ames.

Chairman Lees called the meeting to order at 7:10 p.m.

Chairman Lees opened the meeting stating that there are masks available in the back if you don't have one. He asked people to please be respectful and wear a mask even though the State mandate is no longer in effect. If you are not wearing a mask then please maintain the six-foot social distancing rule.

Chairman Lees introduced the Board to the Public.

Denny is sitting in for Craig Niiler and Jeff Fongemie is new to the Board as an alternate. Stacy Bolduc is the new Recording Secretary for the ZBA.

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

Karl made the motion to accept the minutes of March 23, 2021, meeting with the following amendment: on the 2nd - page 6th paragraph from the bottom omit "*Craig spoke about his feelings on the application.*" Motion seconded by Chairman Lees; Motion passed unanimously.

PUBLIC HEARING

Chairman Lees invited **Case #01-01-01-21 Devin and Lance Bolduc** *continued from March 23, 2021*, to approach the Board with a continued request for a variance under Article 3, Section 304.2 as it pertains to constructing a retaining wall in the setbacks for a driveway entrance off Haverhill Street.

Denny recused himself. Jeff F. sat at the table for Denny who was sitting in for Craig.

Mark McConkey and Jacob McConkey, agent, presented to the board a letter from Engineer Paul L. King dated 4/26/21 outlining Engineering Drainage Review. John Panagiotakos who is trying to purchase the lot was sitting in the public also.

Mark opened with a brief history of this application and the layout of the property and what the goal for the subdivision is. Tonight, Mark is before the board to get a variance to construct a retaining wall. He is presenting

spot elevations and an Engineer stamped letter certifying that the plot in the proposed plan dated 4/11/21 far exceeds the requirements for water drainage and there should be no water shedding to the wetland area with water coming off the shed or the two sides of the apartment. Please see the Engineering Drainage review dated 4/24/21 for details of the plan. Mark explained Road Agent Scott Brooks has been consulted and is comfortable with the plan at this time. Mr. Lees asked if Scott wrote a letter? Mark responded no, Scott issued the driveway permit and he has been involved in the planning every step of the way.

Questions from the Board:

Chairman Lees asked about stormwater calculations. He pointed out the plan has groundwater recharge volume calculations not stormwater calculations as stated in the stamped letter from Paul King. Chairman Lees wanted the board to understand what is being presented is not a true representation of stormwater calculations.

John confirmed to Karl, tonight's meeting is to approve the variance for the retaining wall and believes that Mark has done everything the board has asked him to do. The one thing he does not like about the plan is that there is an inconsistency in the side profile driveway. The note in the plan calls for a 15" culvert or a minimum of a 15" culvert unless otherwise approved by the Road Agent. John wants to see a 15" culvert. Karl would like to see the stormwater calculations rectified.

Chairman Lees asked if any abutters would like to speak.

Steve Becht of 133 Haverhill St. stated he has a better understanding of why the driveway is located where it is. He appreciates the efforts for addressing the water concerns. He questioned the size of the dry well. He is concerned it is not big enough and would like an engineer to look at it. For a point of reference, the subsequent outfall if that dry well overflows will be the Anderson dry well which is full now. He is not sure what size the Anderson dry well is. He also questioned the condition of approval for the driveway to be paved he feels that is a burden for Mr. Panagiotakos. Krebs responded Mr. Panagiotakos agreed to have the driveway paved if he pushed back on the paving, he would listen to that. Krebs also stated the board asked Mark for spot grades that will be out the window in the spring with one winter of plowing.

John Panagiotakos (the buyer) wanted to respond to the paving the driveway comment. He stated he is in favor of the condition and whatever it takes to get this plan approved. To his knowledge, he does not recall the board asking for stormwater calculations at the last meeting but rather how the stormwater would be managed. He also commented that the way the driveway is pitched to the north, he can't see in an event of any size, how any water isn't getting in the rip rap then into the ground and he believes that the height is 7' from the road to the top of the driveway. It is not as high as Mr. Andersons and the pitch is a lot different.

Karl asked if Scott Brooks has seen the plan? Mark responded he has seen the plan. He had talk to him last week and shown him the draft. Scott said when they get in the field if there is an issue, they will address it then. He issued the driveway permit in the location that the plan is showing.

Denny feels Mark and Jacob have done everything the board has asked them to from what he can see. Chairman Lees stated he just read the new Zoning Article regarding Stormwater Drainage and he does not feel that it applies to this lot. He is ready to act on the application.

Krebs asked Mark if he can even buy 6"-12" rip rap Mark said he can and he was advised to go with the larger aggregate. He also questioned if the wording should be changed from a garage with 2 bdr apt. to a house with a garage. Mark can update the wording on the amended plan.

Chairman Lees asked if the board or public had any other questions?

Chairman Lees closed the deliberation at 7:50 p.m.

The board elected to review the Variance worksheet for Article 3, Section 304.2:

The ZBA has the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

1. The variance will not be contrary to the public interest. **Carried 5-0.**
2. The spirit of the ordinance is observed if the variance is granted. **Carried 5-0.**
3. Substantial justice is done by granting the variance. **Carried 5-0.**
4. The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - A. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - i. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and specific application of that provision to the property, and **Motion Carried 5-0.**
 - (ii) The proposed use is a reasonable one. **Motion carried 5-0.**

Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested variance from Article 3, Section 304.2 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

1. Per plan titled Devin & Lance Bolduc 765 Ossipee Lake Rd Freedom, NH dated 4/11/21
2. The driveway to be paved from Haverhill Street prior to the issuance of Certificate of Occupancy.
3. Change word apartment to a 2-bedroom home with garage.
4. Correct the note in the side profile upper left-hand corner of the plan to state culvert will be 15 inches.
5. Add a slab elevation.
6. Change stone size 6" to 12" to 6" minus.
7. Foundation Certification from a licensed NH Surveyor certifying that the foundation is located as shown on the plan.
8. Land Surveyor shall verify that the driveway is graded to the spot elevations on the plan prior to paving.
9. Change Paul King letter note of "*Stormwater calculation*" to *Groundwater Recharge Volume Worksheet*".
10. In the event that the Road Agent wants changes in the stormwater drainage, As-Built Plans shall be provided.

Findings of Facts:

1. The Agent did what the ZBA asked about stormwater runoff.

2. This approval is for the retaining wall and storm runoff as pertains to the wall.
3. Has Driveway approval.

Chairman Lees explained the 30- day appeal period.

Chairman Lees invited **Case #45-12-21, Julianne & Stephen Haskell**, to approach the Board.

Applicant seeks an appeal for a Variance under Article 3, Section 304.5 for minimum rear setback for normal high-water level of 75'. Applicant wishes to add 3' to the first and second floor deck at Map 45, Lot 12, 222 Loon Lake Road.

Denny came back to the table and Jeff F. stepped down.

Allen Fall agent, and Julianne & Stephen Haskell approached the Board. Chairman Lees read a letter from the FCC Chair Jeffrey Nicoll stating concerns that the FCC has about this application regarding stormwater run-off from the structure. They are concerned the addition of the deck extension would increase the runoff from the house that is already within the 75-foot shorefront setback. FCC recommends a method for mitigation of and/or infiltration of stormwater run-off be required for this project to reduce the potential for erosion into Round Pond.

With an aid of a handout, Allen explained the proposal of extending 3' to the first and second-floor deck. Chairman Lees asked the recording secretary if there were any other files on this property. She did not know for sure. Ogren asked if the Haskell's if they have ever asked for a Special Exception or Variance from the Town. The Haskell's responded no and they have owned the land since 1973.

Krebs had two questions for Allen. On the plot plan Allen call's structure "*existing* addition" he does not like that because it has been a part of the house for fifty years and the Haskell's have not done anything to it since they have owned it. Krebs also commented he would be fine putting the stairs in the front of the deck instead of carving them out of the deck so they would have more useable space. The final question Krebs asked is if the existing driveway goes over the leach field? Allen responded that it was designed last year because the septic failed and needed to be addressed. Because of the soil conditions they could go deep enough to use enviro septic pipes. Krebs and Stephens support removing the label existing addition and showing the steps in the front of the deck and grant the setback for 58'.3'.

Mr. Lees asked for comments from the public. There was no public comment. Karl wanted to address the FCC concerns stated in the letter. He did not think the concerns in the letter pertained to this application because the area being discussed is not where the water from the roof is going. But he did recommend the applicants take into account the concerns of the FCC with projects going forward.

The board elected to review the Variance worksheet for Article 3, Section 304.5:

The ZBA has the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

- 1.The variance will not be contrary to the public interest. **Carried 5-0.**
 - 2.The spirit of the ordinance is observed if the variance is granted. **Carried 5-0.**
 3. Substantial justice is done by granting the variance. **Carried 5-0.**
 - 4.The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
 - 5.Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - A. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i)No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and specific application of that provision to the property, and
- Motion Carried 5-0.**

(ii) The proposed use is a reasonable one. **Motion carried 5-0.**

Motion: Chairman Lees made a motion, that, based on the foregoing findings of fact, the requested variance from Article 3, Section 304.5 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

1. Per Plan titled Proposed Addition Plan Tax Map 45 lot 12, Lot 15 (1A) Swasey Corporation Julian Haskell dated March 22, 2021.
2. Remove label “existing addition” and remove the solid line between the addition and the house on the plan.
3. Show the stairs to the deck.
4. Setback from the pond for structure 58'.3'

Findings of Facts:

1. **Lot is kind of flat.**
2. **Stormwater management should be looked at but not in this application.**
3. **New plan 58'.3'**

Allen will bring in five new plans to the office.
Chairman Lees explained the 30-day appeal process.

Chairman Lees invited **Case #24-13-21 Red Top Realty Trust / DJH Investments Trust** to approach the board.

John and Jacob recused themselves and Jeff Fongemie in.

John Krebs and Jacob Stephen recused themselves from this application. Chairman Lees asked Jim if he wanted to continue with the case because there are only four members vs. five to hear the case. Jeff Fongemie sat in on this case. Three people have to vote in favor of the application for it to pass. Jim wanted to proceed.

Applicant seeks an appeal for a Variance under Article 3, Section 304.5 as it pertains to waterfront setback, a Variance under Article 4, Section 406 as it pertains to wetland setback, a Special Exception under Article 3, Section 304.6.3 as it pertains to erosion control, and a Special Exception under Article 3, Section 304.6.5 as it pertains to cutting and removal of trees and natural vegetation in the Shorefront District. The applicant wishes to remove existing structures and replace them with a new structure inside the depicted building envelope at Map 24, Lot 13, 173 Haverhill Street.

Jim Rines of White Mountain Survey & Engineering, agent, explained the plan he has up is the one he submitted however, while he was putting this application together, he had a medical emergency with his wife that prevented him from submitting an updated plan to include a hot tub and deck. He explained the square footage does not change and there are no third-party abutters. He has the new plans with him. The board discussed if the new plans should be accepted. Karl stated he didn't think the board could approve the plan tonight because the new plan was not submitted to the office to give the public a chance to review them. Chairman Lees reiterated the intent of having plans submitted to the office is to give abutters and the public a chance to review the plans and does not feel the board should take action on the application tonight but they can hear the plan. It was decided that the board can hear the application but not act on it tonight.

Chairman Lees read a letter from the FCC outlining their concerns. The letter is in the applicant's file.

Jim opened his presentation stating that the size of the building has not been selected but the maximum building envelope is on the plan. Chairman Lees questioned that the size of the building had not been selected yet and Jim explained at the time of the application the building size had not been selected and that is why he went with this approach and he was under the impression the board accepted this approach. Jim continued to explain though the building footprint has not been established, the maximum envelope possible, equals 15% of the lot area. The actual building footprint and shape will be smaller and lie within the depicted envelope. Scott Lees stated he is not comfortable approving the application without the house on the plan he went on to say for a variance the board should see where the house is going when it's 75' from the water. Discussion ensued around the problems with the house not being shown on the plan and erosion control.

Chairman Lees asked if any abutters that would like to speak. There were none. Chairman Lees asked if the board had any more questions? Karl asked how close they were to having what they wanted for a house designed? Jim was not sure but Krebs thought they were close. The board granted a continuance of this application so they could get the building footprint added. Chairman Lees also suggested addressing the concerns of the FCC regarding stormwater run-off and the setback for the wetlands on the south-side. Karl asked that the tree inventory be added to the revised plan.

Chairman Lees made a motion to continue this application at the May 25th meeting, motion seconded by Karl; Motion passed 4-0-0.

If Jim cannot make this meeting, he will email the office and let them know.

Chairman Lees invited Case #30-7-1-21 Peter McCarriston / John Thompson & Jane Nudd / James Thompson & Jo-Ann Ames to come before the board.

John and Jake came back to the table and Jeff stepped down.

Jim Rines, the agent, started by explaining this application unique property situation (please see the file).

Applicant seeks an appeal for a Variance under Article 3, Section 310.1.7 for relief on side and rear setbacks, and height, a Variance under Article 3, Section 304.5 for front and side setbacks, a Special Exception under Article 304.6.3 as it pertains to erosion control, and a Special Exception under Article 3, Section 304.6.5 as it pertains to cutting and removal of trees and natural vegetation in the Shorefront District. Applicant wishes to remove a portion of the existing cottage and convert it to a rec room/storage and build a new home on the property at Map 30, Lot 7-1, 257 Huckins Road.

Points Discussed:

- The kitchen will be completely removed just a bathroom for convenience.
- A letter was read from the FCC outlining their concerns about this being a small lot and their concerns about stormwater mitigation (please See file).
- Jim asked for a variance for height because of the change in designation for the building.
- Jim pointed out the stormwater mitigation on the plan that would address the FCC concerns.
- Installing a new sewage disposal system.

Karl expressed concern for the old septic tank not being addressed. Chairman Lees asked if the board was ready to vote. Lees asked Jim if the board could combine the variances into one vote.

The board elected to review the Variance worksheet for Article 3, Section 304.5 and Article 3, Sections 310.1.7:

The ZBA has the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

1. The variance will not be contrary to the public interest. **Carried 5-0.**

2. The spirit of the ordinance is observed if the variance is granted. **Carried 5-0.**
3. Substantial justice is done by granting the variance. **Carried 5-0.**
6. The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
7. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - A. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - ii. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and specific application of that provision to the property, and **Motion Carried 5-0.**
 - (ii) The proposed use is a reasonable one. **Motion carried 5-0.**

Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested variance from Article 3, Section 304.5 and Article 3, 310.1.7 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Special Exceptions- The special exception requests for Article 3, section 304.6.3 and 304.6.5 is combined in one vote.

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| A- 5-0 motion carried | J- 5-0 motion carried |
| C- 5-0 motion carried | K- 5-0 motion carried |
| H- 5-0 motion carried | L- 5-0 motion carried |

Chairman Lees made a motion, That, based on the foregoing findings of fact, the requested special exception from article 3, section 304.6.3 and 304.6.5 of the Town of Freedom Zoning Ordinance be granted, motion seconded by Karl; motion passed 5-0-0. (Conditions are the same as the variance motion).

Conditions:

1. Per the Zoning permit plan for Peter McCarrston dated April 12, 2021.
2. Erosion Control shall be installed prior to any earthmoving and remain in place until all site disturbances stabilize.

Findings of Facts:

1. Update Septic
 2. No change in height of the existing structure.
 3. No change on sideline rec room.
 4. Tree cutting for well placement.
- **Communication and miscellaneous.**

There was no mail.

Chairman Lees will invite the FCC to a ZBA meeting to discuss the application process and show them what to look for because FCC is transitioning new members.

Stacy will get the updated Zoning Ordinance Book for members at the next meeting.

There being no new business to come before the board, the Motion by Chairman Lees, seconded by Karl that this meeting adjourns; Motion passed unanimously.

The meeting adjourned at 10:00 p.m.
Respectfully Submitted,
Stacy Bolduc, Admin Assistant