

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

Freedom Zoning Board of Adjustment: **May 10, 2022**

Present: Chairman Scott Lees, Vice Chairman Craig Niiler, Karl Ogren, John Krebs, Peter Kenan, Denny Anderson (A), Tim Cupka (A), Zoning Officer Gary Williams, Recording Secretary Stacy Bolduc.

Absent: Jeff Fongemie (A), Jacob Stephen (A)

Public: Jim Rines, Nick Oberti from Horizons Engineering

During this meeting the Board will hear the following applications:

Application # 30-13-22 Benjamin J. Mckillop
Application # 25-10-22 Caitlin C. Sackman Rev Trust
Application # 31-27-22 Scott C. Johnson Revocable Trust
Application # 33- 25-22 Martin D Sholomith
Application # 27-20-22 Mogan Irrevocable Trust

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

Chairman Lees introduced the Board to the Public.

Notification of this meeting was published in the Conway Daily Sun and posted at the Freedom Town Office and the Freedom Post Office. There were no minutes to review.

The board members voting tonight are Chairman Scott Lees, Vice Chairman Craig Niiler, Karl Ogren, John Krebs, Peter Kenan.

Denny Anderson (A) and Tim Cupka (A) will participate in the discussion only.

PUBLIC HEARING

Chairman Lees invited Application # **30-13-22 Benjamin Mckillop** applicant wishes to remove an existing non-conforming detached garage and construct a more conforming attached garage and construct a new 2- story home in the same footprint as the one story non-conforming home. Applicant seeks the following: Variance from Article 3 Section Table 304.5, from Article 9 Section 906.1, 906.2, 906.3, and a Special Exception from Article 3 Section 304.6.3. Map 30 Lot 13 located at 22 Marjorie Point Rd in the Loon Lake General Res zone.

Jim Rines came before the board to present this application. Points discussed:

- This proposal reduces the lot coverage from 34.5% to 24.9% by the elimination of some gravel areas. The structure coverage will increase from 12.6% to 13.0% due to adding a breezeway but still below the 15%.
- The proposed two-story home will not encroach further into the setbacks than what is existing, with the exception of the breezeway.
- There are no plans to remove trees within the 75' setback or on a slope greater than 12.5%.

Karl asked why they were doing this project. Jim responded they recently purchased the property and want to spend more time here, and they want to put in a new septic and add a second floor.

- The footprint is not changing except for adding a breezeway.
- There was discussion about the location of the current septic system and that there is a community septic system across the street that nobody has information on.
- The site is becoming more conforming that it is going vertical.

There are no abutters or public present tonight.

Craig asked why they did not attach the garage directly to the house instead of putting a breezeway in?

Jim responded so they could have windows to let light in.

John Krebs asked that the new boundary lines be added and correct the spelling errors tone retaining wall to stone retaining wall and pavemant to pavement. He also questioned a galvanized rod that is not on the property line if Jim could pull it. Jim responded he can pull it as a licensed land surveyor, but the homeowner could not remove it.

Chairman Lees was not ok with requiring the galvanized pipe to be removed as a condition.

There were no more questions from the board, and a straight-up vote was taken for the variance.

The board elected to review the Variance worksheet for Article 3, Section Table 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 Table 304.5 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

1. **Per the Plan dated April 7, 2022. Titled Zoning Application for Benjamin McKillip 22 Marjorie Point Rd. Freedom NH.**
2. **Revise the plan to correct spelling errors. Pavemant should read Pavement and tone should be stone.**
3. **Remove silt fence detail on the plan leaving the silt log detail.**

Findings of Facts:

- 1. **Proposed plan would reduce lot coverage of impervious surface.**
- 2. **Proposed plan would increase structure coverage to 13% still is below the 15%.**
- 3. **Proposed plan reduces the existing nonconformity of the lot making it more conforming in rear setback.**

The board elected to review the Variance worksheet for Article 9, Section 906.1, 906.2 and 906.3:

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:
 - 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 9, Section 906.1, 906.2 and 906.3 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

- 1. **Per the Plan dated April 7, 2022. Titled Zoning Application for Benjamin McKillip 22 Marjorie Point Rd. Freedom NH.**
- 2. **Revise plan to correct spelling errors. Pavemant should read Pavement and tone should be stone.**
- 3. **Remove silt fence detail on the plan leaving the silt log detail.**

Findings of Facts:

- 1. **Variance is for front & side yard encroachment of the breezeway & garage.**
- 2. **New building height will not exceed 35'.**

The board elected to review the Special Exception worksheet for Article 3, Section 304.6.

3

- | | |
|------------------------------|------------------------------|
| 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 |

3

Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested Special Exception from Article 3, Section 304.6.3 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

- 1. Per the Plan dated April 7, 2022. Titled Zoning Application for Benjamin McKillip 22 Marjorie Point Rd. Freedom NH .**
- 2. Revise plan to correct spelling errors. Pavemant should read Pavement and tone should be stone.**
- 3. Remove silt fence detail on the plan leaving the silt log detail.**
- 4. No work shall be permitted until State NHDES shoreland permit and septic system permit is obtained.**

Findings of Facts:

- 1. Plan will be revised to eliminate silt fence so a silt sock will be used .**

Chairman Lees explained the 30- day appeal period, and the Special Exception expires 5/10/24.

Chairman Lees invited **Application # 25-10-22 Caitlin C. Sackman Revocable Trust**

Applicant wishes to construct four retaining walls inside the shoreland setback and side yard setback on the property. To help stabilize the site where the nonconforming house was removed. Applicant seeks the following a variance from Article 3 section 304.5 and a special exception from Article 3 section 304.6.3 erosion control.

Jim Rines presented this application and there was no abutters or public present.

Jim explained after the removal of the prior nonconforming home and construction of the foundation for the new home, the contractor determined four retaining walls were needed to mitigate open space left by the removal of the home and the slope from the walkout basement and rear/side of the house. The Sackman's are seeking a variance and permits after the fact for building retaining walls 2 & 3. The plan that was approved by the board last year did not show a wall on the northerly side. Department of Environmental Services said if they get a plan, they will issue an amended shoreline approval because the area of impact is within the previously approved area.

There was considerable discussion around wall # 4. The wall will be made of boulder walls 3-4 feet high.

There was consensus the 1' width of the boulders may be a problem.

Tim would like to see a side view of the wall how it will be constructed.

John would like to see the elevation and is concerned about additional fill being brought in. There are no abutters on the plan. The board thinks the wall would be beneficial to the lake but is concerned about how much fill will be brought in.

Craig commented there needs to be fabric behind the wall and thinks the wall is necessary but does not want it built in the 75 ' setback. He would like to see it placed where the least amount of fill would need to be brought in. Jim explained it is already being built in the impact zone where the existing house is. John suggested running the wall parallel to the contours. Chairman Lees summed up the board comments and agrees with Peter that he doesn't want to see the wall be taller than 4'.

Board is requesting everything to be shown on one plan:

- Abutters
- Cross sections
- Calculations on the fill
- Show how deep the wall is
- Spot elevations along the wall top and bottom
- When the board states one plan they clarified they wanted to see everything that has been approved in the past as well on the plan.

It was agreed to continue the Caitlin C. Sackman Revocable Trust application until May 24, 2022.

John made a motion to continue the Caitlin C. Sackman Revocable Trust application until May 24, 2022, motion seconded by Karl; Motion passed 5-0-0.

Application # 31-27-22 Scott C. Johnson Revocable Trust

Applicant wishes to complete construction that has been started on four retaining walls. The applicant did not realize retaining walls were “structures” in the zoning ordinance and therefore require compliance with structure setbacks or relief for encroachment into the setbacks. Applicant seeks the following:

Variance from Article 3 section 304.5. Map 31 Lot 27. Located at 38 North Broad Bay Rd. Zone: Broad Bay Gen Res.

Jim Rines presented this application. The same contractor that did the work on the previous application did not realize retaining walls are considered structures and work was started without submitting a variance application . Four walls are needed to mitigate the slope from the walkout basement and the rear/side of the house and garage. The southerly and northerly side yard setback encroachments were to tie the retaining wall back into the existing grade. The impervious lot coverage went to 18.3% still below 25% lot coverage and the removal of four trees last summer does not negatively impact the tree count. Erosion control measures were prior to construction under the prior approval and will remain in place until the site is stabilized.

The trees on the plan that were removed are marked with an + sign. The 438 line and where it ties in was discussed. Jim confirmed the board was looking at an as-built plan of the wall and that the wall is already built and is constructed of Redi rock. There are no comments from abutters or Conservation Committee. Craig commented if this were a plan would the board approve this? None of the walls in question are on the application. Chairman Lees commented he does not have a problem with the two northern walls. He questions the southerly wall and he does not favor the size of the westerly wall. Craig said he agrees with Scott, but lives in a similar situation. He would be honing in on a wall to protect the foundation if this wall was not built already. He questioned what the options were, could the wall be wrapped tighter. The height of the wall was discussed (it’s 9 feet tall). Both of the sidewalls impact the sideline setbacks. Zoning Officer Gary Williams commented because of the sonotubes; it would be difficult to remove the wall and not jeopardize the house’s structural integrity. Tim knows this area and stated the site is very sandy and the wall is necessary to sustain the house, and he supports the wall. The board briefly discussed if this house were not already built, they would have requested it be pushed back to soften the wall. Chairman Lees asked if the board would benefit from a site visit? John is in favor of the wall and Craig is ok with the wall but would like to see a planting plan for screening as a condition and have the side walls tie in tighter to avoid the sideline setback. Karl asked if the board could ask the applicants to come back with a planting plan. Craig mentioned an equitable dimensional waiver as an option and explained what that is.

A condition will be a planting plan for the westerly and southerly wall and reduce side yard setback.

Peter made a motion to continue this application until May 24, 2022, motion seconded by Karl; Motion passed 5-0-0.

Denny left the meeting at 8:45 p.m.

Application # 33-25-22 Martin D Sholomith

Applicant wishes to add an addition to an existing structure, a patio, stairs with resting landings over the bank to the shoreline and a seasonal dock with a concrete anchor pad. Applicant seeks the following: Variance from Article 3 Section Table 304.5, Variance from Article 7 Section 703.6, Variance from Article 9, Section 902 Variance from Article 9, Section 906.2, Special Exception from Article 3 Section 304.6.3, Special Exception from Article 7 Section 703.5. Map 33 Lot 25. Located at 113 East Danforth Rd. Zone: Danforth Pond Gen Res.

Jim Rines presented this application. Jim opened with a brief discussion about a road that was cut in to Map 33-Lot 26 by the previous owner Henry Gaewsky to remove a garage. Sholomith wants to add an addition to the existing non-conforming house and construct a stairway down to the lake that has a place to rest every four feet so his wife can rest. He would also like to build retaining walls. Jim went through all the setbacks, variances and special exceptions the applicant is asking for. Please see application for details. The variance request is for not having to replant after the removal of trees, with the location of the existing home, driveway, and new sewage disposal system, there is no suitable location for plantings beyond the 75-foot setback that could bring the tree score into compliance or back to the nonconforming grid score. Craig questioned the planting plan for grids 3 and 4 and expressed his concern for the cyanobacteria in Danforth Pond. This home is located in the impacted area. He questioned what should be used for ground cover. Blueberry bushes were suggested.

Other points discussed:

- Trees that are being removed are insignificant.
- Getting to the existing path is difficult.
- North side complies with the setbacks.
- The path will be planted
- The beach exists and nothing is being done with the beach.
- Managing stormwater runoff with infiltration trenches.
- John does not like the plan size. The scale is too small. He would like to see the details of the survey boundaries on the plan.
- A letter from the Conservation Committee was reviewed suggesting plantings. Craig wants follow up on the use of natural vegetation to restabilize the bank in sections 3 and 4.
- Karl wants a condition of this application to be that the work be continuous. It is Jim's understanding that the work will begin with putting the stairs in and work backward.

The board elected to review the variance worksheet.

Applicant seeks a **Variance** under Article 3, Section Table 304.5

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:

- 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 from Article 3, Section Table 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 Zoning Permit Application prepared for Martin D. Sholomith dated 4/11/2022.
2. All work to be done within two years upon issuance of building permit.
3. Provide the Town with the Survey Plan.
4. Relocate the propane tank onto the property.
5. Obtain NHDES Shoreland and subsurface plan. (In the process of being issued).

Findings of Facts:

1. Owner plans to restore and replant “the path”.
2. Grids 3 & 4 will be restored with native ground cover.
3. The area between house and lake was a lawn in 2006

Applicant seeks a **Variance** under Article 7, Section 703.6 as it pertains to wetlands setbacks for

- 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:

- 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 from Article 7, Section 703.6 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

1. Per Plan titled Zoning Permit Application prepared for Martin D. Sholomith dated 4/11/2022.
2. All work to be done within 2 years upon issuance of building permit.
3. Provide the Town with the Survey Plan.
4. Relocate the propane tank onto the property.
5. Obtain NHDES Shoreland and subsurface plan. (In the process of being issued).

Findings of Facts:

- 1. Owner plans to restore and replant “the path”.
- 2. Grids 3 & 4 will be restored with native ground cover.
- 3. The area between house and lake was a lawn in 2006.

Applicant seeks a **Variance** under Article 7, Section 703.6 as it pertains to wetlands setbacks for

- 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:
 - iii. 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 from Article 9, Section 906.2 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.

Conditions:

- 1. Per Plan titled Zoning Permit Application prepared for Martin D. Sholomith dated 4/11/2022.

Findings of Facts:

- 1. Owner plans to restore and replant “the path”.
- 2. Grids 3 & 4 will be restored with native ground cover.
- 3. The area between house and lake was a lawn in 2006.

Special Exceptions- The special exception requests for Article 3, section 304.6.3 and Article 7 Section 703.5 are combined in one vote.

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 Exceptions from article 3, section 304.6.3 and Article 7 section 703.5 of the Town of Freedom Zoning Ordinance be granted, motion seconded by Karl; motion passed 5-0-0.

Conditions:

- 1. Erosion Control will remain in place until the site is stabilized.

Findings of Facts:

1. Photographs to be submitted spring and fall for two growing seasons to verify the success of successful restoration of quadrants 3&4.

Chairman Lees explained the 30-day appeal process. These Special Exceptions/Variations will expire 5/10/24.

Application 27-20-22 Mogan Irrevocable Trust

Request for an 18-Month extension to the variance granted on May 13, 2020. The reason for the extension is because applicants are still waiting for NHDES to act on a Shoreland Permit since October of 2020.

Chairman Lees updated what the board learned from the attorney regarding granting an extension. He said a extension could be granted and recommended it be for the time needed to complete the project only and to update the old zoning codes to the new ones. After a brief discussion Chairman Lees made the following motion:

Chairman Lees made a motion to extend a Variance Article 3 Section 304.5, Special Exception Article 7 Section 704, Special Exception Art 3 Section 304.6.3; motion seconded by Karl; Motion passed 5-0-0.

Conditions:

Refer to original approval for application #27-20-20

Findings of Facts:

1. **The Freedom Zoning codes numbers have changed since 2020.**
2. **Variance Article 3 Section 304.5 is the same.**
3. **Special Exception Article 3 Section 304.6.4.1 is now Article 3 Section 304.6.3**
4. **Special Exception Article 3 Section 304.6.7.3 is now Section 704**
5. **This Variance Extension is for a period of 18 months. The conditions of the original plan remain the same.**

Chairman Lees explained the 30-day appeal process. Variance and Special Exception expire 11/10/2023

Miscellaneous

- **Communication and miscellaneous.**

There was no mail.

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

The meeting adjourned at 10:00 p.m.

Respectfully Submitted,
Stacy Bolduc,
Recording Secretary