

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

Freedom Zoning Board of Adjustment: **September 27, 2022**

Present: Vice Chairman Craig Niiler, Karl Ogren, Peter Keenan, Denny Anderson, Zoning Officer Gary Williams, Recording Secretary Stacy Bolduc.

Absent: Chairman Scott Lees, Jeff Fongemie (A), Jacob Stephen (A), Pam Keith (A)

Public: Walter Latta Jr., Jack Hardiman, Paula Hardiman, Valerie Sumner, Dana Sumner, Kate Foss Delorge, Ben Delorge, Mark McConkey, Jacob McConkey, Jim Rines, Wayne Wenzel and Kenneth Wenzel.

During this meeting the following applications will be heard:

Application #33-10-22 Walter, Courtney, and Lynda Latta

Application # 26-9-22 Foss Delorge Revocable Trust Katherine Foss, TTEE and Benjamin Delorge, TTEE

Application # 27-12-22 Dana & Valarie Sumner

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

Vice Chairman Niiler 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.

Karl made the motion, seconded by Denny to accept the minutes of the August 23, 2022 meeting with the following amendment:

On the last page, the last paragraph change the word “appoint” to “recommended” after Denny Anderson and Pam Keith.

PUBLIC HEARING

Vice Chairman Niiler invited Application # # **33-10-22 Walter, Courtney, and Lynda Latta** (continued from August)

The applicant wishes to expand an existing non-conforming patio and to permit tree removal below the required tree count. The applicant is also seeking an after-the-fact Special Exception for the removal of trees within 300' of the shoreline.

Applicant requests the following:

Special exception from Article 7 Section 703.05 any cutting between 75' and 300' of the reference line shall require a cutting plan to be approved by the ZBA.

Variance from Article 3 Section 304.5 Table

Variance from Article 9 Section 906.02 the expansion or extension shall not violate the side yard or rear yard setback.

Variance from Article 7 Section 703.04 for the tree count points to be less than allowed.

At Map 33 Lot 10 Located at 69 West Danforth Rd. Zone: General Residential.

Vice Chairman Niiler explained that there are only four board members present tonight, though three members make a quorum applicants have the right to a five-member board. The applicant can continue their application until next month's meeting if they would like to have a five-member board hear their application.

Jim Rines came before the board to present this application and updated the board on the changes made since the last meeting. Changes include:

- Revising the location of the patio to be 2' away from the northerly boundary line.
- Crushed stone infiltration was added around the patio. The infiltration is 18 inches deep and has been sized for the 25-year storm event.
- Proposed plantings have been added in grids two and three and now show on the plan (see application for what is being proposed for plantings).

Jim handed out a letter from TLL Tree Service confirming that the trees that were cut were diseased. The plantings bring the vegetation count back to the original count before removal in grid two and grid three to a 51-point score. Grid 3 is the only grid seeking relief.

Karl asked how big is the patio, Jim responded 180 sq. feet it was reduced by 6 ft.

A letter of support from Bruce Howlett on behalf of the Friends of Danforth Ponds was read into the minutes.

Jack Hardiman from an abutter spoke in favor of the application stating the lot is a lot cleaner.

The board elected to roll the variances into one vote. Conditions and Findings of Facts are the same for each variance.

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 4-0.**
2. The spirit of the ordinance is observed if the variance is granted. **Carried 4-0.**
3. Substantial justice is done by granting the variance. **Carried 4-0.**
4. The value of surrounding properties is not diminished if the variance is granted. **Carried 4-0.**
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 4-0.**
 - (ii) The proposed use is a reasonable one. **Motion carried 4-0.**

Conditions:

1. **Per the Plan titled Walter A. Latta Jr., Courtney J. Latta & Lynda L. Latta with revision date 9/12/2022.**
2. **Visit the site in one year to monitor the growth of plantings.**

Findings of Facts:

1. **Smaller patio**
2. **Replanting of trees and shrubs**
3. **Cleaning of lot**
4. **Letter of support from Friends of Danforth Bay**
5. **Trees removed (15 pts) were hazardous trees**

Motion: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variances from Article 3, Section 304.5 and Article 9, Section 906.02, and Article 7, Section 703.04 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 4-0.

The board elected to review the Special Exception worksheet for Article 7, Section 703.05

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| A- 4-0 motion carried | J- 4-0 motion carried |
| C- 4-0 motion carried | K- 4-0 motion carried |
| H- 4-0 motion carried | L- 4-0 motion carried |

Conditions:

- 1. Per the Plan titled Walter A. Latta Jr., Courtney J. Latta & Lynda L. Latta with revision date 9/12/2022.**
- 2. Erosion control is to be installed prior to any earth disturbance and will remain in place until the ground stabilizes.**

Findings of Facts:

- 1. Erosion Control**

Motion: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Special Exception from Article 7, Section 703.05 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 4-0.

Vice Chairman Niiler explained the 30-day window for someone to appeal the board's decision. Zoning Officer Gary Williams stated we do not issue a building permit until the 30-days are up. The trees can be taken down and are not a condition of the building permit. Gary will assist Mr. Latta in permitting him to take care of the trees that need to be taken down.

Chairman Niiler invited Application # 26-9-22 Foss-Delorge Revocable Trust Katherine Foss TTE, and Benjamin Delorge, TTE

Applicant is applying for an after-the-fact permit to retain the partially completed retaining wall, remove the portion over the boundary line, adding a stairway to reach the partially completed retaining wall, and place stepping stones and stairs at the switchbacks, within 75 feet of the shoreline.

Applicant requests the following:

Variance from Article 3 Table 304.5

Variance from Article 9 Section 906.2 the horizontal expansion or extension shall not violate the side or rear yard setback.

Special Exception Article 3 Section 304.6.3 Erosion Control

Special Exception Article 7 Section 703.5.2 Erosion Control

At Map 26 Lot 9 Located at 364 Pequawket Trail. Zone: Ossipee Lake Gen Res.

Karl made a motion to continue the Foss-Delorge Revocable Trust application until October 25, 2022, at the request of the applicant because there only being four board members present, motion seconded by Vice Chair Niiler; Motion passed 4-0-0.

Vice Chairman Niiler invited Application # 27-12-22 Dana & Valarie Sumner

Applicant wishes to relocate existing garage so that it will be an addition to the house and construct deco eaves over windows on the house and enclose the bulkhead and construct a new garage.

Applicant requests the following:

Variance from Article 9 Section 906.1 Front yard setbacks

Variance from Article 9 Section 906.2 Side and Rear setbacks.

Special Exception Article 3 Section 304.6.3 Erosion Control

At Map 27 Lot 12. Located at 496 Pequawket Trail Zone: Ossipee Lk Gen Res.

Mark & Jacob McConkey came before the board to present on behalf of the Sumners. Mark explained this is a pre-existing non-conforming lot and described where the property is located. The changes being proposed are to make the home a year-round home. Originally the Sumner's wanted a 12 ft. deck off the front of the house but Mark explained they would not get far with that so; the deck is now being proposed for the side of the house instead of adding on to the lake side of the house. Applicants would like to move the existing garage to the back of the home and use it as an entryway (the placement of the garage is to avoid going over septic lines and walking into a bedroom). In addition, they would like to add a side porch to the right of the home to sit their hot tub in and reconfigure the stairs on that side. The foundation is a flow-through foundation because the home is in a flood zone and there is a dug out under the home that the applicants would like to put a bulkhead over. The last thing they would like to do is add deco eaves over the windows for shade. A new garage is also being proposed that meets all setbacks. There is no tree cutting being proposed that was taken care of by the Zoning Officer when they had to install a new well. Lot coverage goes from 20.52% to 20.48%. The lot has an existing septic system.

The only property line that is seeking relief was surveyed by White Mountain Survey and disk are in place. White Mountain did not have time to confirm the property line before this meeting but will certify it before construction.

Denny questioned the relocated garage if it would be an entryway. There is no basement under this house so there is no storage the garage is being repurposed as an entryway and storage. Craig questioned what the garage would sit on. If it would have to be on piers. Karl questioned if the house/garage is on piers what purpose does the bulkhead serve? Mark explained that now there is board that runs around the outside of the home so it is not getting a free flow of air going through it and when the boards are in place there is no way of going in and out. There is an existing ramp that goes under the house for now. The bulkhead will allow for the house to be more weather tight preventing air from flowing under the house. Craig questions if the bulkhead would interfere with the way the flow-through foundation is designed to work. Mark will find out for the next meeting. Karl confirmed the proposed garage has no living space, septic, or water.

Abutter Wayne Wenzel approves of the application and stated the Sumner's have been great neighbors and have cleaned up the lot.

Kenny Wenzel thinks he is an abutter though he did not receive an abutter notice, and believes with the new dam and all the technology today the chance of a flood is very remote. He approves of what the Sumner's are doing and doesn't believe anything they are doing is bad for the environment or the existing home.

There was discussion if Kenny should have received an abutter notice because of a road that abutt's (Cheever Drive) the Sumner's property. Craig asked Mark to confirm if Kenny should get an abutter notice. Mark thinks the right of way is two or three blocks removed. Mark will confirm if the right of way is attached to the house.

Karl has no problem with the proposed or relocated garage. He's not sure about the hot tub deck and with the garage, he would like to see the temporary storage container units go away. The Sumner's confirmed the temporary container units will go away once the garage is done. The construction of the bulkhead was discussed next. The bulkhead is not made of steel. It will break away. The relocated garage will be put on blocks with a slab to bring it to the same level as the house. Denny supports a house that allows water to flow through and but does not support a slab underneath the relocated garage. Mark said they would address that. It was discussed building the garage the same way the house was built. The hot tub deck does not bother the abutter, Wayne Wenzel.

Points for next month's meeting that need to be addressed:

- Make sure the relocated garage and bulkhead is floodway compliant. (Gary suggested doing the garage like the house).
- No living space in the proposed garage
- Specify the temporary containers will be removed. They need to be removed from the proposed conditions.
- Abutter's right of way needs to be verified to make sure everyone is notified.
- No issues with the wooden valances.

There was a discussion on the hot tub deck. Karl would like to see it get smaller. Mark explained they can't move it to any other location due to access and logistics. Mark will confirm what the deck will be made of for the next meeting and how it will affect the rest of the house. Denny and Craig are ok with the hot tub deck because it is not infringing further on anything. The construction is important because it is the first area of water to flow through.

Karl made a motion to continue this application until October 25, 2022, motion seconded by Denny; Motion passed 4-0-0.

The recording secretary forgot to hand out a letter from the FCC. A copy of the letter was given to Mark and noted for the minutes the square footage for the lot may be wrong on the application.

Miscellaneous

A thank you letter for John Krebs was signed by the board members that are present and the recording secretary will contact Chairman Lees to let him know that the letter is at the office to be signed.

- **Communication and miscellaneous.**

There was no mail.

There being no new business to come before the board, Karl made a motion, seconded by Denny that this meeting adjourn; Motion passed unanimously.

The meeting adjourned at 8:30 p.m.

Respectfully Submitted,
Stacy Bolduc,
Recording Secretary