

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

Freedom Zoning Board of Adjustment: **October 25, 2022**

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

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

Public: Dana Roy, A.J. Battles, Dana Sumner, Robert Chaplin, Kate Foss, Ben Delorge, Jo Jo Howlet, James Rines, Mark & Jacob McConkey, Ed & Lisa Falanga.

During this meeting, the following cases will be heard:

- #26-9-22 Foss-Delorge Revocable Trust Katherine Foss TTEE and Benjamin Delorge TTEE
- # 27-12-22 Dana & Valarie Sumner
- # 32-36-22 Edward & Lisa Falanga
- # 41-7-22 Robert Chaplin
- # 32-7-22 Dante & Preciosa Lantin

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 October 25, 2022, meeting with the following amendments:**

**Remove Vice Chairman Niiler from the Board members present and where it states he invited applicants to come before the board #33-10-22. On pg. 5 second paragraph, 5<sup>th</sup> sentence down update to state, “Denny does support a house that allows water to flow through but does not support the proposed garage to sit on a slab.”**

**PUBLIC HEARING**

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

Applicant is applying for an after-the-fact permit to retain the partially completed retaining wall, remove the portion over the boundary line, add 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.

Vice Chairman Niiler addressed Jim Rines, the agent for Foss-Delorge and recounted this is an application that the board heard in June and denied. He continued to explain that the law does not allow the board to hear an application again unless the application presented tonight is “*substantially different*” from the last application. Chairman Niiler advised the discussion should open with how this application differs substantially from the previous one.

With the aid of a plan Jim Rines recited, the application is “materially” different for the following reasons:

- They are removing the request to complete the retaining walls to the top of the slope.
- The removal of the encroachment of the retaining wall over the boundary line to a point of 1.0’ inside the boundary line.
- The elimination of the proposed patio seating area.
- The planning scheme specified in the existing retaining walls, the area where the existing stairway will be removed, the pathway to the previously proposed patio, the top of the bank where stones are presently stockpiled.
- Applicant is proposing a new stairway that will start at the existing patio, compliant with the side yard setbacks at the starting point and will lead to the location where the unpermitted retaining wall and pathway end presently, being 23.7’ from the side boundary line and 65.8’ from the shoreline.

Chairman Niiler asked the board if they thought this application was substantially different from the previous application. Chairman Niiler mentioned that the addition of the rock/rip rap/ wall on a stable bank in the shorefront zone is a big sticking point and, because the wall is still on the plan, is still determining if this application addresses that.

The discussion ensued around if the application is materially different. Jim pointed out the concern is this wall was placed by hand they; did not use mechanical equipment to place the wall, but they would have to use mechanical equipment to remove it, which would do more harm than leaving it. So, the changes made to the application were thought to be materially different, so that the board would consider it.

Chairman Niiler explained the board is tasked with considering this as a permit and would the board approve this application with the existing conditions on the property the way they were before the work was done, would this be a project that the board would have proceeded with and approved in the way it is being presented.

Karl stated that he does not think the application is materially different and does not think that the board would have approved this application if it had come to the board like the project had never happened. There is a lot of material still on the plan that he does not support. There was a brief discussion about the difference between “materially” different vs. “substantially” different. Both Peter and Denny don’t think the application is substantially different and do not support hearing the application.

**The board voted unanimously 5-0 that the application was not substantially different enough to hear the application.**

Vice Chairman Niiler invited **Case 27-12-22 Dana and Valarie Sumner**

Applicant wishes to relocate the existing garage to be an addition to the house, construct deco eaves over windows on the house, 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 and Jacob McConkey are agents for Dana and Valarie Sumner. Jacob reviewed the changes made to the plan per the board's request last month:

- The temporary storage has been removed from the proposed conditions
- Added a note that the proposed garage is to have NO living space, water, or septic.
- Added note about new structures that needed to be floodway compliant.
- Removed the hot tub from the hot tub deck and the deck is now just a deck.
- Changed bulkhead to breakaway crawlspace door with stairs leading to it.
- Added dripline trenches to the relocated garage.

Mark stated that the foundation for the relocated garage is now flow through, not a slab. The proposed garage also complies with all FEMA regulations. All abutters have been notified. Mark attended the FCC meeting and answered all their questions. He corrected the wrong square feet stated on the plan and answered questions regarding the driveway, the proposed garage, and dripline trenches.

The board asked how many breakaway crawlspace doors would be needed. The hot tub is no longer going on the deck.

**There were no abutters or public to speak to this application.**

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

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.**

**Conditions:**

1. **Per the Plan dated 10-8-2022 titled Dana Martin Phillip & Valerie A. Sumner**
2. **Must obtain all State and Local permits**
3. **Structures be floodway compliant**

**Findings of Facts:**

1. Expansions do not further encroach into setbacks than the existing non-conforming structure.
2. Repurposed garage/entryway will have flood breakaway relief in the supporting structure.
3. Applicant has revised the proposal to meet the requests of the board from previous meeting.

**Motion: Niiler made a motion that, based on the foregoing findings of fact, the requested Variance from Article 9, Section 906.1 and 906.2 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

The board elected to review the Special Exception Worksheet for Article 3, Section 304.6.3:

- |                              |                              |
|------------------------------|------------------------------|
| <b>A- 5-0 motion carried</b> | <b>J- 5-0 motion carried</b> |
| <b>C-5-0 motion carried</b>  | <b>K- 5-0 motion carried</b> |
| <b>H- 5-0 motion carried</b> | <b>L- 5-0 motion carried</b> |

**Conditions:**

1. Per the Plan dated 10-8-2022 titled Dana Martin Phillip & Valerie A. Sumner
2. Must obtain all State and Local permits
3. Structures be floodway compliant

**Findings of Facts:**

1. Expansions do not further encroach into setbacks than the existing non-conforming structure.
2. Repurposed garage/entryway will have flood breakaway relief in the supporting structure.
3. Applicant has revised the proposal to meet the requests of the board from previous meeting.

**Motion: Niiler made a motion that, based on the foregoing findings of fact, the requested Special Exception 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.**

Vice Chairman Niiler explained the 30-day appeal process. Variance and Special Exception expire 10/25/2024

**Chairman Niiler invited Application # 32-36-22 Edward & Lisa Falanga**

Applicant wishes to permit a shed to remain in place and replace six retaining wall sections to become four retaining walls and add a new stairway to the lower beach.

Applicant requests the following:

Variance from Article 9 Section 906.2 of the zoning ordinance to permit the expansion or extension of the retaining walls and stairs to not meet the side yard or rear side setback.

~~Variance from Article 7 Section 703.5.1 to permit the construction in areas that slope greater than 12.5% towards the lake.~~

~~Variance from Article 7 Section 703.5.2 to permit the potential to cause stormwater to flow towards the lake.~~

Special Exception Article 3 Section 304.6.3 erosion control.

At Map 32 Lot 36 located at 11 East Danforth Bay Rd. Zone: Danforth Pd. Gen Res.

Mark and Jacob McConkey presented this application. Mark gave an overview on the history of the property and described the state of the concrete walls and the deteriorating landscape timbers that need to be replaced. In a site visit with Zoning Officer Gary Williams was discovered that a shed was placed on the property up near the road without a permit. The applicants were under the impression because the shed met the national codes for structures that it was ok to put the shed where they did. The proposed wall was discussed next. None of the walls meet sideline setbacks so they are proposing to bring the walls back to make them conforming and replace

the stairs that will go to the lower wall. The wall will be a redi rock wall. There are no trees to be cut and lot is heavily wooded. Mark explained that the silt socks and erosion control devices will be put in place as they work up and down the hillside. Everything that is being proposed moves further away from the sidelines. They are reducing the size of the beach slightly by reducing the wing of the retaining wall by the water and pushing that wall further back from the water. The stairs will be easier to use to get to the water, and the view from the water will not change from what they see now. Discussion ensued around the height of the walls and the slope on the water side of the wall is reduced. Karl asked what the stairs were being made of; Mark did not know yet.

**There was no public or abutters to speak.**

Walls C and D do not differ much from what is there and do not change the grade. The walls are replacing what is already there but are being pushed back.

The shed- the shed sits on rocks and is 8x14. Mark said there is nowhere on the lot for the shed to go because of the slope of the land. Looking at the plan, Craig thought the shed could be moved further back from the road to get closer to meeting the setbacks. The slope of the land makes it difficult to do that. The Falanga's have had a conversation with the neighbors; and no one had a problem with the shed.

Craig asked how the board feels about the shed and walls; the board has no issues with the walls.

It was decided that the applicants did not need Article 7 Section 703.5.1 or 7 703.5.2 but, for the shed, the applicant needs to ask for relief for the front and side yard setbacks. Abutters will be noticed. Mark requested that Article 7 Section 703.5.1 and 703.5.2 be removed and they will return for the shed next month. They can use the same plan, and the abutters will be noticed with the correct requests for the shed.

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

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:
    - 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: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variance 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. Obtain all State and Local permits
2. Per Plan dated 10/8/2022 titled Edward Jr & Lisa M. Falanga (2 pages).
3. Approval is not for the shed.

**Findings of Facts:**

1. Erosion control remains in place until site is stabilized

2. Obtain all State and Local permits

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**

**Chairman Niiler 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, motion seconded by Karl; motion passed 5-0-0.**

**Conditions:**

1. To be installed prior to breaking ground and remain in place until site is stabilized.
2. Sock to be maintained.
3. Per Plan dated 10/8/2022 titled Edward Jr. & Lisa M. Falanga

**Findings of Facts:**

1. Erosion control remains in place until site is stabilized
2. Obtain all State and Local permits

Vice Chairman Niiler explained the 30-day appeal process. These Special Exceptions will expire 10/25/2024.

**Vice Chairman Niiler invited case # 41-7-22 Robert Chaplin**

Applicant wishes to remove old deck & install a new deck with a roof. Applicant is requesting a variance from Article 9 Section 906.1 and 906.3.

A.J Battles and Robert Chaplin came before the board to present this application. Mr. Chaplin has a medical condition that does not allow him to shovel snow. The request is for stairs with a roof over them that will not be enclosed. The board discussed measurements with the applicant. The board had no problem with this application the dimension of this project is 13x7. The applicant needs a variance from section 9 Article 906.1 and 906.3.

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

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:

- 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: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variaces from Article 9 Section 906.3 and 906.1 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

**Conditions:**

1. Applicant may construct a front stoop with stairs and a roof with footprint dimensions of 7' x13' attached to the front of the home
2. Not to be enclosed.

**Findings of Facts:**

1. Medical need for applicant cannot remove snow.
2. Not closed in
3. Not that big for applicant
4. 7'x13' stoop, stairs, roof not enclosed.

Vice Chairman Niiler explained the 30-day appeal process. Variance and Special Exception expire 10/25/2024

**Vice Chairman Niiler invited application # 32-7-22 Dante & Preciosa Lantin**

Applicant wishes to build a 12x26 deck in the same footprint as existing patio.

Applicant is requesting a variance from Article 9 Section 906.1 and 906.2 at Map 32 Lot 7 located at 49 Abenaki Dr.

Dana Roy came before the board to present this application. With the aid of a handout (a picture), he explained the applicant wished to build a deck over an existing patio and stay within the same footprint as the patio. The landscaping timbers are deteriorating, and Dana will replace them in the spring. There is no encroachment on the water. No trees will be cut, and he will use swales. He will need a shoreland permit. It was suggested when Dana applies for the Permit by Notification that he does it for the rotting railroad ties at the same time he does the deck. There will be four sauna tubes that will be dug by hand. The deck will be 10'x26'.

Dana made a request to withdraw Article 9 section 906.1 and Article 7 Section 703.5.1 that he requested in the application. If it is discovered that Dana needs special exception for erosion control after going to the State, then he will have to come back next month because it was not noticed this month.

Applicant seeks a **Variance** under Article 9, Section 906.2 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:

- iv. 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: Vice Chairman Niiler 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 the Plan dated 10/26/22 titled Lantin for New Deck.**
- 2. Must obtain all State and Local permits**

**Findings of Facts:**

- 1. Removal of patio blocks will allow water to flow into the ground.**
- 2. Existing patio will be removed below the patio.**

Vice Chairman Niiler explained the 30-day appeal process. Variance expires 10/25/2024.

**Miscellaneous**

Vice Chairman Niiler updated the board that the department head meeting is tomorrow night, whoever would like to go is welcome.

- **Communication and miscellaneous.**

There was no mail.

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

The meeting adjourned at 9:30 p.m.

Respectfully Submitted,  
Stacy Bolduc,  
Recording Secretary