

ZONING BOARD OF ADJUSTMENT

P.O. BOX 227

FREEDOM, NH 03836

Freedom Zoning Board of Adjustment: **January 24, 2023**

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

Absent: Chairman Scott Lees, Jeff Fongemie (A), Jacob Stephen (A), Tim Cupka (A)

Public: Sally Stoddard, Raetha Stoddard, Stacy Sands, Bill Dempster,

During this meeting, the following applications will be heard:

Application # 37-10-01-22 Vivian C. Dinapoli, Donna M. Amado, and Raina Alves *continued from December 27, 2022.*

Application # 27-26-23 James & Susan Cotter

PUBLIC MEETING

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 December 27, 2022, meeting with the following amendments: Pg. 4 line 154 remove *never after the word has*. Motion passed 5-0-0.

PUBLIC HEARING

Vice Chairman Niiler invited Application # **37-10-01-22 Vivian C. Dinapoli, Donna M. Amado, and Raina Alves**

Applicant wishes to build a single-family home with a deck and walkout basement and three retaining walls for the house, access to the lake, and a perched beach. The applicant is seeking the following:

Variance Article 3 Section 304.5 Table

Special Exception Article 3 Section 304.6.3 Erosion Control

Special Exception Article 7 Section 703.4 Shoreland Protection

At Map 37 Lot 10-1, located at West Bay Rd. Leavitt Bay Gen Res Zone.

Jim Rines from Horizon's Engineering came before the board to present this application. He explained James Hayden was not able to attend tonight's meeting. He summarized the changes in the application as the following based on the ZBA and FCC board's input from the last month's meeting:

- The footprint of the house and deck (including overhangs) has been reduced from 1,910 SF to 1,748 SF to remove all encroachments within the 75' lake setback.
- The house foundation is 40' by 28', and the deck varies from 5.5' wide to 8'.

- The new design only seeks relief from the front setback to a distance of 19.8 feet from the boundary line (25 feet from the edge of the traveled way, which is consistent with other homes in the neighborhood).
- Tree cutting is limited to what is needed for construction of the walkout basement, proposed steppingstone path, and perched beach.
- Lot coverage went from 19.5% to 18.1%.
- The applicant is not seeking any side yard or retaining wall setback relief.
- A detail sheet has been added showing cross section for retaining wall detail and stepping stones, driveway section, and silt log and silt fence detail.

Jim explained that they went to the Conservation Commission meeting last week and the board requested that the stumps be ground down and flush where the path is going. Jim explained they couldn't ground the stumps down where the perched beach is going because the State requires all perch beaches to be constructed level. Jim also explained that when preparing for the Conservation Commission meeting, he noticed that in the plan the board has in front of them, a couple of trees are marked for removal that will not be removed. The plan has been revised and Jim has the plans with him tonight; a note has been added saying, "*Trees to be removed are for path and to have stumps ground flush and not removed*", and the two trees that are not being removed are a 2" gray birch and 7" pitch pine. The septic is a chambered system. The road distance for the setback did not change. Jim explained it was a reasonable request because it does not change the neighborhoods character and is consistent with development patterns.

The FCC letter was read into the record. The revisions for stepping stones, stormwater management, and retaining walls changes were reviewed and received as positive changes in helping with stormwater infiltration into the lake. They made the following suggestion:

- The ZBA makes a site visit.
- Because the site is fragile and prone to erosion challenges, it's suggested that the trees being cut, be ground down to keep the root system in place to help stabilize the soil.
- Additional measures should be put in place to keep the stepping stones in place and stabilize the area with additional ground cover plantings and other best management practices.
- The perched beach will require significant erosion protection to prevent washout into the lake.

There was a brief discussion about the details and provisions needed to build the perched beach and the use of a mini excavator to do the work. Tree grids where the beach is going were discussed all the tree counts were met. The most significant change in the plan is the reduction of trees being removed. Karl would have liked to see the size of the house be smaller. The place went from 42 ft. long to 40 ft., and the width from 31 ft. to 28ft. the deck size was reduced. It was reduced enough to get the house out of the 75ft. setback for the lake but not the roadside. Karl would have liked to see the house come back further from the road. Karl reviewed the checklist, and the following comments were made:

- The number of trees is acceptable.
- The only trees that are being ground down where the path is.
- Craig is not sold on the perched beach. He would like to see a dock structure. Jim said the State would not permit a dock for sitting.
- Denny and Pam are comfortable with the changes.

Craig asked for input from abutters.

Sally Stoddard- is an abutter on the south side. With an aid of a handout, she showed how fragile the property is pointing out how steep the bank is and the topography of the bank. She explained that the bank is sand and silt. She pointed out pictures 2,3, and 4 showing the property at the low water mark. She also explained where the water sits on the bank at the high-water mark. She commented that the total square feet of the house are only 162 sq. ft total ft. smaller. She disagrees with Jim's statement about the other homes in the neighborhood where they sit in relationship to the road.

Craig asked Sally if water runs from West Bay Rd onto this lot. Sally responded yes then referred to Raetha Stoddard who expressed her concern about the flooding of the road and how the construction and the driveway will affect her property. Any time there is rain there is flooding. It was discussed if the road flooding is a Town issue or a lot owner problem.

Denny stated the building on the lot is not the cause of the flooding on the road and what is being discussed could be take care of with a driveway berm. The driveway will be pervious. Craig reiterated that development should not affect stormwater runoff to adjacent lots. That is a fundamental part of development. Discussion ensued around concern of runoff onto abutter property. Stacy Sand questioned if the Town would take responsibility for runoff onto their property. With the aid of a hand out she showed that the surrounding houses are not built close to the road and she also showed the size of the houses. She also questioned what is the highwater mark and how it relates to the reference line. Jim explained the process. Stacy Sand questioned the hardship piece of the application. she also questioned why there is a request for any variances when the house size can be reduced and she does not feel there is a need for a perched beach and the only hardship she can come up with is that the current owners can not sell it for the price that they want to. Craig responded to the hardship question that the State has defined what a hardship is. Any lot of record can be built on that is reasonable. The ZBA Board is tasked to give relief to building something reasonable. Sally questioned owners of the property are different than the people proposing the building. The people presenting are prospective buyers and Sally questioned what is their hardship; they don't own the land. Jim Rines explained the hardship is not regarding a person, it's can't be financial or for a person. The hardship relates to zoning or in the land.

Craig asked if there were any other abutters or public that would like to speak.

Sharon Quinlan the person trying to buy the property stated that she and her husband live in Mountain View and they love Freedom and Ossipee Lake and explained they like this location on the lake because it in the channel and there is a no wake zone. They are looking to build a moderately sized home and they took all the feedback from the last meeting to make sure they came back with a significantly different plan. They could have gone smaller but that would be a very small house. The only other option is to go up but, nobody wants to look at that she said. They trying to be relatively conservative.

Jim Rines said he has been challenged about the neighboring homes and their location and said he can show them on his phone with a GPS site map the property lines and where the homes are located in relationship to the road.

Board Comments:

Karl supports the house being pulled away from the beach but would like to see it pulled back from the road more other than that, he thinks Jim has done everything that the board asked him to do. He has no concern with the trees but wants to make sure the driveway is designed so, that is cannot shed water onto the neighbor's property. The perched beach was discussed as being permissible but there is concern how a machine will get down the slope to build it. Gary would be the one to monitor the concern regarding the excavator.

Craig said they have met the sideline and beach setback it just the roadside setback he thinks the house is balanced. Its not a small house but, it is nowhere as big as what the town allows for size in terms of square feet and the percentage of impact. Denny likes that they addressed the number of trees being removed and agrees with the FCC that to concentrate on the area where the walkway is and does not feel the board can tell the applicant the to build a 10x28 house which is what it would have to be to meet all the setbacks. Pam would rather see a house closer to the road than to the lake. Discussion ensued around the placement of the driveway, septic and well and the approval goes with the land and expires in two years if approved.

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

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 1/25/2023 prepared for Jeffrey & Sharon Quinlan land N/F Vivian C. Dinapoli, Donna M. Amado & Raina Alves West Bay Rd., Freedom.
2. Obtain all State and Local permits

Findings of Facts:

1. Per Plan for Jeffrey & Sharon Quinlan Land N/F Vivian C. Dinapoli, Donna M. Amado, & Raina Alves West Bay Rd., Dated 12/27/2022 with Rev. dates 1/9/23, 1/19/23 and 1/25/23.
2. Both silt fence & silt log shall be used.
3. No building in the 75. Ft except for the perched beach
4. Water runoff onto the road and abutter property is a concern of the neighbor.
5. Revised application shows many trees were saved from the last application.
6. House is slightly smaller than original.
7. 2-bedroom septic.
8. Erosion will stay in place until site is stabilized.

Motion: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variance from Article 3, Section 304.5 Table 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

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

Motion: Vice Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Special Exception(s) from Article 3 , Section 304.6.3 and Article 7 Section 703.4 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 1/25/2023 prepared for Jeffrey & Sharon Quinlan land N/F Vivian C. Dinapoli, Donna M. Amado & Raina Alves West Bay Rd., Freedom.
2. Obtain all State and Local permits
3. Silt Log & Silt fence must be used simultaneously.
4. Revised plan showing condition #3 to be submitted.
5. Construction of beach must not cause any disturbance of the area outside the permitted beach.
6. All disturbed areas to be stabilized by live native ground cover.

Findings of Facts:

1. Per Plan for Jeffrey & Sharon Quinlan Land N/F Vivian C. Dinapoli, Donna M. Amado, & Raina Alves West Bay Rd., Dated 12/27/2022 with Rev. dates 1/9/23, 1/19/23 and 1/25/23.
2. Both silt fence & silt log shall be used.
3. No building in the 75. Ft except for the perched beach
4. Water runoff onto the road and abutter property is a concern of the neighbor.
5. Water from the road should be managed effectively.
6. Revised application shows many trees were saved from the last application.
7. House is slightly smaller than original.
8. 2-bedroom septic.
9. Erosion will stay in place until site is stabilized

Vice Chairman Niiler explained the 30-day appeal process. These Special Exceptions expire 1/24/2025.

Vice Chairman Niiler invited application # **27-26-23 James & Susan Cotter**

James and Susan Cotter, the owners of 440 Pequawket Trail, Map 27, Lot 26, appeal the Select Board's decision finding that they must comply with Article 15 of the Town's Zoning Ordinance which requires a conditional use permit for the use of a dwelling as a short-term rental. The applicant's appeal states the Select Board's interpretation of Articles 2, 9, 15, 23, and Sections 2302, No. 17, 19, and 45 of the Town's Zoning Ordinance is in error and their use of their property as a short-term rental is a grandfathered preexisting, nonconforming use.

Vice Chairman Niiler explained that the Cotter's could not make the meeting tonight due to COVID and has requested that the application be continued. There was a brief discussion on the STR process and why an STR would come before the ZBA.

Denny made a motion to continue application#27-26-23 James & Susan Cotter until the February 28, 2023 meeting, Motion seconded by Karl; Motion passed 5-0-0.

Public Meeting

Miscellaneous

- **Communication and miscellaneous.**
 - Request for volunteer appointment to the ZBA Board was deferred until next month.

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 9:00 p.m.

Respectfully Submitted,
Stacy Bolduc,
Recording Secretary