

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

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

Present: Chairman Scott Lees, Karl Ogren, Denny Anderson, Peter Keenan, Pam Keith, Zoning Officer Gary Williams, Recording Secretary Stacy Bolduc.

Absent: Jeff Fongemie (A), Jacob Stephen, Vice Chairman Craig Niiler

Public: Mark McConkey, James Hayden, Terry Leavitt, Raetha Stoddard, Deb Azrael, Andrew Morey, Quiyote Fitzpatrick, Jordyn Fitzpatrick, Stacy Sand, Zoe Gaslon, Sally Stoddard, Ed Alkaklay, Sharon Quinlan, Nancy McDermott, Dorothy Hackett

During this meeting, the following applications will be heard:

Application # 27-8-22 Randy Hagger & Jennifer Kunsch

Application # 37-10-01-22 Vivian C Dinapoli, Donna M. Amado and Raina Alves

Chairman Lees called the meeting to order at 7:05 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.

Pam made the motion, seconded by Peter, to accept the minutes of the November 29, 2022, meeting as written; motion passed 5-0-0.

Chairman Lees reviewed the difference between a Special Exception and a Variance and how the meeting will precede.

PUBLIC HEARING

Chairman Lees invited Application # **27-8-22 Randy Hagger & Jennifer Kunsch**

Applicant wishes to raze the existing non-conforming home and construct a new conforming home over the existing garage and tie in the septic system and construct a new garage on the property.

Applicant is seeking the following:

Special Exception for erosion control Section 3 Article 304.6.3

Mark McConkey presented this application to the board. After a brief description of the project with the aid of a handout, the board elected to review the special exception worksheet because the applicant only seeks a special exception for erosion control.

There was no public or abutters to speak to this application.

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: 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 plan titled Randy Roy Hagger 68 Old Yankee Rd. Haverhill MA, 01832**
- 2. Provide NH DES shoreland permit to the Town.**
- 3. Erosion Control is to remain in place until the construction is complete and site is stabilized.**

Finding of Facts:

- 1. Three-bedroom septic. House will only have three bedrooms**
- 2. Applicant is only seeking erosion control.**
- 3. No work is being done within 75 ft. of the lake.**

Chairman Lees explained the 30- day appeal period and the Special Exception expires 12/27/2024

Chairman Lees 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

James Hayden from Horizons Engineering came before the board to present this application. James explained this is an existing lot of record that predates zoning. The applicant requests relief from the proposed home's road front setback. The building envelope is a very small rectangle. The proposed home is a single-family home with a walkout basement and retaining walls, access to the lake, and a perched beach with retaining walls. The applicant is proposing a 12' deck off the house. James went on to explain that he and Jim Rines did an in-depth survey of the neighborhood because they wanted this site to fit into the character of the neighborhood. They found that about 50% of the homes along West Bay Rd. on Ossipee Lake are about 36 feet from the road traveled. The proposed house would be 26' from the edge of the traveled way and 19.8' ROW boundary. It was clarified that the proposed deck is 67.8' from the shoreline. The living space is at the 75' setback. Chairman Lees asked why not an 8' deck. James said he would have to talk to the applicant. James reviewed the plan for the public.

James confirmed for Chairman Lees that the house has a full foundation under it, and the deck is an 8' deck that goes into the lake reference line 12'.

Tree cutting was discussed next.

The grids most impacted by tree cutting are grids 2A, 2B, 3A, and 3B for tree cutting, the applicant meets the tree count because the grids are smaller. Pre- tree and post-tree counts need to be on the plan. Peter asked if any consideration was given to the type of trees being cut. Peter pointed out that the grade is very steep in grid 3A.

Chairman Lees reminded the board that the board approved an application with a steep lot and a retaining wall had to be built after the fact to hold the bank back. Chairman Lees and Karl do not approve of all the trees being cut on the steep slope. Freedom Conservation Commission did not send a letter regarding this application. Denny commented the house is where it needs to be on the lot. The board discussed the size of the house briefly. Pam does not like the house's size or the roadside setback. Karl suggested making the house smaller and maybe eliminating the request for relief on the lakeside. He would like to see a request for one setback only, to help with having to eliminate trees. Pam agrees with Karl and agrees the trees are an issue. Peter concurs with what board members have brought up for concerns. He is familiar with that part of the lake and reiterated what James stated about the houses being close to the road. He has no issue with the setback for the house but does not support the number of trees coming out of grid 3A. He suggested moving the steps to the perched beach to eliminate having to take down so many trees. Denny has no issue with the house but does not support the amount trees being taken down due to the steepness of the bank.

The perch beach and the steps were discussed next.

James explained that the proposed steps are paver stepping stones and he will look at the trees in 3A. Karl commented that this proposed project/plan is far beyond what he is comfortable with and feels it needs a lot of work. He would support denying the application, so it would have to come back significantly different. Chairman Lees said the plan needs retaining wall detail.

Chairman Lees asked if any abutters were in favor of this application.

There were no abutters in favor.

Abutters who are opposed:

Ed Alkalay of Alkalay & Smillie briefed the Board that he has been hired on behalf of the Stoddard Family Trust to represent them to help address some of their concerns. He stated that he has listened to the board and thinks that the board has hit the nail on the head, saying that the proposed house is too big for this lot. He said this lot could be used without requesting a variance or special exception and he compared it to the lot next door. Mr. Alkalay argued that the application did not meet the criteria for hardship; there is no special condition for this property that would distinguish it from the lot next door, causing it a hardship. He summarized there is not a reasonable use that the special conditions of the land rendered use for which the variance is reasonable. Regarding the special exception, he concurs with what board members have touched on regarding concerns for the trees and soil. Mr. Alkalay concluded that the applicants should not need a variance on either side of the property to build something similar to what is on the lot next to them.

Sally Stoddard addressed the board and gave the history of the lot that once belonged to her grandfather and then went to her mother. Sally stated that the lot in question was a part of the one that she owns now, but when her mother owned the lot, she divided it creating a tiny one purposely so it could not be developed. This lot also has the steepest part of the bank, and she said it was disingenuous to say there is a beach there. When the lot was a part of her lot, the beach was big enough to put in one paddle boat or canoe. She is concerned about erosion if trees were removed, it will affect her lot negatively. She also expressed concern about being able to put a well and septic on the property and space them out properly. Sally also quoted the application which stated, "For the perched beach, out of necessity, we must violate the shorefront setback" she pointed out if you have to violate the shorefront setback due to topography, then something else other than what is being proposed needs to go there. Sally commented on the noticing process and felt there needed to be more time to prepare for the meeting from the time they received the notice until the meeting.

Zoe Gaslon spoke to how her mother and grandmother wanted the land preserved and her concern about how the project will impact the environment.

Raetha Stoddard concurred with what Sally and Zoe stated and added that she was raised to be a steward of the waterfront and the pine barrens and was pleased to hear the board's comments on the trees. She stated that the statement that 50% of the neighborhood are on the street is not valid.

Stacy Sand questioned the placement of the proposed well on the property, if it should be 75 ft. from the road, and if the plan has a septic or well approval. She also wanted to know how the requests for the variances and special exception affects the States decision because local board decision carries a lot of weight. She also thinks the house is too big and the leach field needs to be bigger for the house. She also commented on the proposed tree's to be removed and appreciates the board's comments about the trees.

Terri Leavitt concurs with what has been stated by abutters and the board.

Deb Azrael- concurs with what has been stated.

Christine Cook commented on how busy the neighborhood is from Memorial Day – Labor Day and wanted a condition in place for owners to put in an artesian well. Chairman Lees stated the board never has made that a condition. Christine explained she and a group she belongs to share a concern about the position of the well and the leach field and retaining walls that might push excess water onto her property.

Public

Sharon Quinlan and her husband Jeffrey Quinlan are trying to purchase the property, she stated that one of the concerns they had was the size of the lot, so they surveyed the lot and found that it is slightly larger than the one next door.

The board went back to James Hayden. James asked if he should address each person's concerns. He made a list of them.

The first concern he addressed was Ed Alkalay's statement about there not being a hardship for this lot, he stated this lot is similar to the building envelope for lot 10-2 the existing cottage on 10-2 is only 50' away from the reference line and about 50' away from the right of way. The hardship for the applicant is the building envelope is only 20' wide from east to west. James continued to argue any house would be hard-pressed to meet the setbacks without violating setbacks for either the lake or the right of way, given how small the building envelope is.

James said the biggest thing to note is the lot runs parallel to the lake to any runoff that is created from this lot will run straight down to the lake. Chairman Lees would like to see spot grades. The well can be placed anywhere on the lot and the well radius can go outside the existing lot lines given that the applicant gets a well radius release and as long as the septic does not interfere with the 75' setback from the lake. The septic chamber is big enough for a three-bedroom house it doesn't go by square footage. The house is two bedrooms. James doesn't think the perched beach is going to disturb anyone and the reason it is a perched beach is because they wanted to limit the disturbance inside of the buffer.

Chairman Lees asked if the board has any questions for James. It was reiterated that whatever plan comes back has to be significantly different, one of the ways to do that is to deny it tonight. Erosion control was briefly discussed and driveway detail also needs to be on the plan. The Board would also like to hear from the Freedom Conservation Commission. Chairman Lees commented he would like to see the 75' setback away from the contours. In conclusion the size of the lot does not support the size of the house. Erosion is a big concern of the public and the abutters.

Karl reiterated to James he wants Freedom Conservations comments and it was suggested that James try to get on the FCC agenda for January. The following also needs to be on the plan:

- Two-bedroom septic if that is what it is.
- Cross sections
- The size of the foundation
- Driveway detail
- Material for the stairs and the walls and how they will set in place
- Clarify the beach
- Show through contours pre and post development stormwater flows that the runoff will not increase and impact the road or neighbors.
- Erosion control detail

Peter would like to know what type of trees will be cut.

Plans need to be submitted January 9th for January 24th meeting.

Chairman Lees made a motion to continue this application until January 24th 2023, motion seconded by Karl; Motion passed 5-0-0.

Public Meeting

The board reviewed the 2023 meeting schedule and it was decided to move the December meeting to December 19th with a submittal date December 4th.

Questions from the public:

Miscellaneous

- **Communication and miscellaneous.**

There was no mail.

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 9:00 p.m.

Respectfully Submitted,
Stacy Bolduc,
Recording Secretary