

**ZONING BOARD OF ADJUSTMENT
P.O. Box 227
Freedom, NH 03836**

Minutes

Freedom Zoning Board of Adjustment: **April 25, 2023**

Present: Chairman Scott Lees, Karl Ogren, Peter Keenan, Zoning Officer/Building Inspector Gary Williams, Pam Keith sitting in for Craig Niiler, Denny Anderson, Recording Secretary Lindsay Pettengill, Town Administrator Stacy Bolduc.

Absent: Vice Chairman Craig Niiler, Jacob Stephen, Tim Cupka (A).

Public: Diane Gorrow, Susan Cotter, Jim Cotter, Matthew Johnson, Robert Ducker, Kathleen Lippi, Nancy Trombini, Dan Footit, Melissa Florio, Anne Cunningham, Jim Rines, John Immediato, Brian Taylor, Scott Pettengill

During this meeting, the following cases will be heard:

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, non-conforming use.

Application # 40-12-23 Kathleen Lippi & Robert Ducker

Applicant seeks a variance from Article 3 Section 304.2 for relief for a carport 36.06 feet from Poplar Ridge Rd. and 42.16 feet for a farmer's porch facing Milford Ave. The applicant also wishes to remove an existing non-conforming shed to improve the properties aesthetics.

Property is located at 49 Milford Ave. Map 40 Lot 12

Application # 24-14-23 Paul & Joy Nowak

The applicant is seeking to permit a previously constructed foundation drain within the shoreland buffer. Applicant is seeking a Special Exception from Article 3 Section 304.6.3 for erosion control.

Property is located at 181 Haverhill St. Map 24 Lot 14.

Application # 37-7-23 Lindsey Archila & Denise Savoie

Applicant seeks to add an attached 24 by 28 two car garage with finished space overhead. Applicant is requesting the following:

Variance Article 3 Section 304.5 Table

Variance Article 9 Section 906.1 Front Yard Setback

Variance Article 9 Section 906.2 Side yard Setback

Special Exception Article 3 Section 304.6.3 Erosion Control
Special Exception Article 7 Section 703.05 Any cutting between 75 and 300 feet of the reference line
Property is located at 291 West Bay Rd. Map 37 Lot 7.

Application # 51-33-23 Pamela Clemons-Keith, Barry H. Keith, and John L. Manning DBA PB&J Company

Applicant wishes to appeal an administrative decision from Article 7 Section 702 for change in non-conforming use. Applicant is seeking to have one bedroom apartment on one floor and six offices on another.

Property is located at 11 Elm St. Map 51 Lot 33.

Application # 30-13-23 Benjamin J. McKillop

Applicant wishes to repair and replace existing retaining walls and steps, as well as construct new retaining wall and stairway to the shoreline. Applicant is requesting the following:

Variance Article 3 Section 304.5 Table

Variance Article 9 Section 906.3 No portion of the enlargement can exceed the height of the existing non-conforming structure (retaining wall)

Special Exception Article 3 Section 304.6.3 Erosion Control

Property is located at 22 Marjorie Point Rd. Map 30 Lot 13.

Application # 24-13-23 DJH Investment Trust

Applicant seeks a special exception from Article 3 Section 304.6.3 Erosion Control related to the expansion of the existing driveway, construction of a fire pit and the construction of a porous grass path to the house, and walkways as shown on the plan.

Property is located at 173 Haverhill St. Map 24 Lot 13.

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.

PUBLIC MEETING

Karl Ogren made the motion, seconded by Peter Keenan, to accept the meeting minutes of March 28, 2023, as written. Pam Keith abstained.

PUBLIC HEARING

Chairman Lees invited Application # 27-26-23 James and Susan Cotter Application

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, non-conforming use. This application was continued from the March 28, 2023 meeting due to only having a four-member board.

Attorney Matt Johnson as an agreement with town council to bring a test case in front of the zoning board relative to the Town of Freedom's enforcement actions relative to the short-term rental ordinance. The Cotter's have rented their property as a short-term rental since 2009 therefore their attorney argues this constitutes a grandfathered use under Freedom's zoning ordinance and New Hampshire State law RSA 674;19 regarding preexisting use that predates the enactment of Freedom's Short-Term rental ordinance. Pam asked Attorney Johnson to read RSA 674;19, which he did not have. Attorney Johnson read Section 201 of Freedom's Ordinance. Attorney Johnson also states that Public Health and Safety requirements are not enough, and there must be actual evidence that there is Health and Safety issues for the public, reference RSA 48A – housing Standard. Attorney Johnson states most important, Freedom's Ordinance by the plain terms of what it says and that's what the Zoning Board has to enforce and interpret, the terms of the ordinance in affect at the time that the Cotter's submitted this application, that short term rentals are a permitted use for a single-family dwelling. Attorney Johnson referenced the definitions section of the Freedom Town Ordinance.

Definitions read:

Dwelling, single-family - A detached residential dwelling unit other than manufactured housing, designed for and occupied by one family only.

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Dwelling Unit: A room, or rooms connected together, constituting a physically separated single habitable unit intended to be used for living, sleeping, cooking, and eating for owner occupancy, or for long-term rental or lease (30 days or more.) Amended 03/14/2023

Attorney Johnson states you would not need the word rental if the only thing ever permitted was long-term leasing. He states there's a doctrine in the law that words are supposed to be interpreted so they all have meaning. Only way to interpret that provision is to say that rental has to mean something different than leasing, in this case would be short-term rentals. If rental by definition is a use permitted under your definition of single-family dwelling, then it is a permitted use, therefore you cannot have a conditional use permit for an owner using their property in a way that is permitted use under the plain language of the zoning ordinance. Short-term rental ordinance exceeds the towns authority in multiple ways.

Attorney Johnson on behalf of the applicants asks the Zoning Board to do the following:

Find that they are not subject to the Conditional Use Permit requirement under the Short-Term Rental Ordinance, either because it is a grandfathered use they have owned and rented their property long before this ordinance passed. Second, even if they were not grandfathered by the plain language of the ordinance, they are a single-family home, it is a dwelling unit by definition of a dwelling unit and you are allowed to rent your properties. Therefore, it is a permitted use under the ordinance and the selectmen should have no basis to enforce the short-term rental ordinance against the Cotter's or other similar situated owners in the Town of Freedom.

Chairman Lees requested clarification in the definitions. Attorney Johnson states rental needs to mean something different than lease otherwise it would not have both words in the ordinance.

Denny asked if he was saying that they did not have proof of rentals from 2009-2022 they can't prove that they rented it for 90 days?

Attorney Johnson states that he read the letter as 90 days a year not just 90 days in aggregate, but his other point is that there is nothing in the statute, if a use exists before the zoning ordinance changes that is a preexisting use and that is grandfathered. There is nothing that he is aware of that says that the Town can put conditions on

whether it is a grandfathered use. His point is that the Cotter's were using this property as a short-term rental every year since 2009, so the use that the Town is now trying to regulate they were doing every year so there is no basis to put a 90-day requirement on it.

Denny asked if the home was only used for rentals. Attorney Johnson said it was important aspect that gets overlooked is that they use the house for rentals so they can afford to keep it and have it be for their family. It is used far more for family than it is for rentals.

Chairman Lees asked if the Cotter's had proof that they had rented it for 2 years prior to the Zoning Ordinance? James Cotter stated that they use a service called HomeAway that keeps track of their rentals, taxes and such that are incurred during the rental period, however this is the first year that they have used this service. Susan Cotter states she spent her whole childhood up here, they purchased their home up here in 2002. But in order to hold on to it they need to rent it out, they use it for a few weeks at the beginning of the summer and a few weeks at the end of the summer. Their daughter got married there last year. They do not look at it as a rental property they look at it as a home. Mr. Cotter states they were more financial able to afford the home when they first bought it than now, but they have been able to hang on to it by renting it, they even sold their house that they lived in to afford to keep this one.

Denny states he has a problem with the safety side of things, he asked if they were saying they were not willing to address these liability concerns. Mr. Cotter states they have fire extinguishers and alarms, as they live their themselves. Denny stated, then they are not arguing with this part of the ordinance, to which Mr Cotter stated they did not. Attorney Johnson jumped in to make it clear that what they do as a responsible home owner at their property is different than what the Town of Freedom can dictate to them and other similar owners. So they can do that but this is defined as a single family home and as a single family home there is no requirement to do all of those steps and because it is grandfathered in and meets the definition of a single family dwelling unit those sections do not apply. They do them anyway, but from a matter of the zoning enforcement and the authority of the selectmen to enforce those restrictions, they do not have that authority.

Chairman Lees asks, how is it as a single-family home that is meant to be used by the homeowner, it seems different if you are now renting it and making money off of it, it is no longer just a residential it is now a business and as a business there are certain things you must meet. Attorney Johnson, says 1. Your ordinance does not state that, the definition of dwelling unit says for rental. 2. There is a definition of non-residential use and that is all uses of buildings, structures and land except single family dwellings. This is a single-family dwelling.

Chairman Lees states the ordinance reads Dwelling - single family – a detached residential dwelling unit other than manufactured housing, designed for and occupied by one family only. Attorney Johnson reiterated it as one family at a time. However, that is not what the ordinance states. Chairman Lees states we do not define rental or lease in the ordinance.

On behalf of the Selectmen was Attorney Diane Gorrow. She handed out some materials to the Board, to help understand what the Selectmen's position is and also just to explain the laws that the selectmen are following. The packet includes:

- Short Term Rental Application that the Selectmen have established
- Tax Card for the property
- Information from Airbnb and VRBO- From January 2023, Advertising as a 3-bedroom sleeping 8. Photos in the advertisement clearly show issues we would submit with egress as far as living space
- April 24, 2023 VRBO listing

The Board of Selectmen have made the determination in interpreting the ordinance that was adopted by the voters of Freedom in 2022, that existing short-term rentals that can demonstrate that they were renting for more than 90 days would be grandfathered from that requirement. The ordinance does not prohibit you from renting less. The Cotter's have not submitted any application to the Town, their contention is that they are grandfathered. The selectboard has determined and the law supports that this ordinance Section 15 of the conditional use permits, the express purposes are to protect water quality, and to ensure the safety of the STR occupants. Most of the requirements in the short-term rental ordinance are designed to protect the public health, water, safety of the STR occupants and the residential neighbors from nuisances. There are requirements in the application that would be completed by the land owner that they would fill out an affidavit as far as life/safety requirements being met. Under NH Law even if you have a preexisting use that is grandfathered, you're not grandfathered from activities that are a nuisance or that are harmful to public health and welfare. It is the selectmen's determination, that the provisions in the STR ordinance that was adopted by the Town are meant to deal with the safety of the occupants using those properties. The NH Supreme Court has said, a use of land which at the time of restriction on that use went in to effect was established or vested and has not been discontinued or abandoned can continue indefinitely unless it includes activity which is a nuisance or harmful to the public health and welfare. There is no such thing as an inherent or vested right to imperil the health and welfare and safety of the community. The Selectboard has interpreted the ordinance to strike that balance where there are health and safety requirements, none of the STRs that existed are exempt from those requirements. The photos that were provided do not show the fire extinguishers and smoke alarms that the Cotter's indicated. They also show that there are issues with egress in a couple of the rooms.

Karl states that the Town of Freedom by vote of the people adopted this ordinance and the selectmen are not saying that we cannot have short-term rentals, they are even saying you are grandfathered if you have history of over 90 days and can prove it. The only thing we might be questioning is the authority to assure that safety things are in place for people that are not familiar with the house. Melissa Florio, Selectmen also added safety of our waterways due to septics. We have multiple applications and permits/renewals, others who have been grandfathered and have provided the requested information, as well as others with egress or safety issues and the fire chief and zoning officer were able to help them meet the needed requirements. Septic issues arise when you are renting to more people than the septic is designed for.

Peter addressed that no application or affidavit has been filed for the Cotter's.

Attorney Garrow states the STR is a permitted use but you need to get the conditional use permit and meet the requirements set forth in it in order to obtain the permit.

Chairman Lees states that what it comes down to for the Selectmen is making sure that the life/safety codes and requirements are met.

Peter asked if the application states they meet all requirements and something happened where does the liability fall? Attorney Garrow states the applicant who signed the affidavit would be responsible. If they are perjuring themselves by giving an affidavit that is not correct the Town would not be held responsible.

Attorney Garrow states the case of Cohen V. Town of Henniker, the NH Supreme court has stated "A use of land which at the time a restriction on that use went into effect was established or vested and has not been discontinued or abandoned that can continue indefinitely unless it includes activity which is a nuisance or harmful to the public health and welfare but the use cannot be changed or substantially expanded without being brought into compliance." In another case, the Supreme court has stated, there is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.

Abutters in favor:

Mark Petit – lives next door and has had no problem with the Cotter's rental.

Abutters opposed: None

Public in Favor:

Jojo Howlett – Believes the Town Attorney could have been clearer on a few things. The real question A. Was this a permitted use prior to the passage of the ordinance and if so, does it get grandfather status under Article 2 and 9? There is no evidence of a nuisance or danger to the public. She believes that we can all agree that the Town with the voting in favor by the public has the right to propose these changes to the ordinance and the public can also agree to that but that did not happen until March of 2022. Prior to that the language of the definitions section makes it clear that a single-family dwelling, one was permitted to either own or occupy it, to rent it, or to lease it. This is a town that is at least 50% weekend homes, and for years many have rented their homes to make additional income and have always had to be concerned about the safety of the people that they rent to. She believes the Cotter's have historically taken seriously the burden of safety issues. In the absence of evidence of an actual nuisance nothing about this case that the Town's attorney has cited would apply. She states the dwelling unit definition was just passed in March 2023 to state rental or lease of more than 30 days. She believes it is important that this right existed until the passage of the ordinance and should treat it as any other grandfathered situation.

Public Against:

Anne Cunningham, Chairman of the Planning board who has been involved with this since the permitting process. She was not speaking against but just wanted to speak as to why this came about.

The original 1987 zoning ordinance used the word rental. The idea of a short-term rental was not the same in 1987 as it is today.

The planning board got involved as short-term rentals were a problem in Conway and other surrounding towns. A resident came to the Board of Selectmen and asked for them to be prohibited. The Selectboard, because there are many families in Town that have owned properties for generations and have previously rented them out, the Board of selectmen charged the Planning board to find a way to have these as a permitted use in order to reflect the fact that we have more seasonal residences than we do full-time residences

As for safety, by State law, a fire chief cannot go into a residence without permission unless there is legal permission enter because of a known danger.

We ask for the affidavit and pictures as we cannot go in and confirm that, but the biggest issue we have had has been egresses. We have been able to work with those home owners in order to make them safe and usable for those renting the home.

Susan Cotter states from the pictures on their VRBO listings, you cannot see that they have 3 fire extinguishers and smoke alarms and they vetted their renters. They say they are a "Premier host" according to the rental sites. What Mr. Cotter states he is not understanding is the 90-day limit. He does not feel that they will ever go over 90 days as they have been spending more and more time here, but if they do they want to be able to do so.

Attorney Johnson states that the nuisance that was brought up by Attorney Gorrow has to be a present nuisance or health concern. He states we never heard from the selectmen any justification of how they came up with the grandfathering.

Pam asked The Cotter's why they are opposed to filling out the application, to which Mrs. Cotter stated they were not. Mr. Cotter stated the application did not exist when they first started this, his problem is that if the Town is allowed to put a number on this now, what is stopping the Town from lessening the number of days down the road.

Attorney Johnson states the broader question and why the Zoning Board is here is to determine if the Board of Selectmen have the authority to enforce or seek fines for not complying with the Short-Term Rental Ordinance if we say that they do not have the authority to make them comply with the Short Term Rental Ordinance because they are not subject to the Short Term Rental Ordinance.

Denny states this is bigger than just the Cotter's. This is another test case and Chairman Lees agrees it has potential implications which go beyond the Cotters.

Attorney Gorrow states the 90 days comes straight from the ordinance; it establishes an annual maximum short-term rental is 90 days in any calendar year. Where the 90 days comes from as far as the Selectmen's interpretation of the ordinance, if you rented for more than 90 days your use would be prohibited now because the limitation is 90 days, therefore there is proof needed as the packet says, establishing that you have rented for more than 90 days.

Anne Cunningham speaking on behalf of the Selectmen, explained how they go to the 90-day limit in the ordinance. They began trying to figure out how to stop our residential neighbors from turning into a collection of boutique hotels. Originally, homeowners were just renting out their homes to be able to pay their taxes. So, they looked at the taxes that are to be paid if you live in the shorefront district and they set 45 days. At 45 days looking at what the home owners were charging vs. what their taxes were, that would cover the taxes times 3. The taxes are higher in the shorefront district as are the rentals. There were many public hearings with many people who said that was not enough, they wanted to be able to rent more. That is where it was upped to 90 days on the basis that in most cases people could pay their mortgage, their property insurance and their taxes with there rental profits. That is how it was set to 90 days. We wanted to set a limit so that we didn't have investors coming into Freedom, buying multiple homes, not living here and not having grown up here in the summers. Marriot and others are buying up places in the Valley and the Lakes Region, Freedom implemented the 90 days to make sure that the people who are not trying to become real estate investors could rent their homes, make some money, pay their bills and taxes, but leave our residential neighborhoods somewhat intact.

Abutter in favor: None
Abutters opposed: None

Public in favor:

Jojo Howlett wanted to emphasized that she does not disagree that we want to limit and control going forward, but to the Board the question is really "Are the Cotter's grandfathered?". Whether the right of the people who were renting before the passage of the new ordinance and whether the constitutional and zoning ordinance right to continue in a non-conforming preexisting use adheres. Whether or not Article 2 & 9 apply given the definition of dwelling unit.

Public Opposed: None

Applicant did not wish to say anything further.

Denny suggested he needed a month as he did not feel we had enough information to make a decision.

Karl states the Town voted on this, the selectmen are enforcing it and the Board is to determine if they are supporting the selectmen in the enforcement of the Ordinance as it was voted in by the people of the Town. He states we are not trying to understand the legality of a higher court case above us but trying to decide if the selectmen erred in their interpretation or enforcement of what was put in front of them by the people of the Town of Freedom. If it is true that this ordinance is incorrect it is not the Selectmen who enacted the ordinance it is the people of Freedom. The Selectmen are just doing what was written for them to do. It could be seen the other way if the Selectmen did not enforce this there could be residents coming forward asking why they are not enforcing the ordinance that was put in place by the people of Freedom.

Motion: Karl makes a motion to uphold the selectmen's interpretation and decision regarding this short-term application #27-26-23. Motion passed 4-1 abstained.

Findings of Facts:

1. Selectmen are enforcing what is in the town ordinance and what was voted in by the people of Freedom.

2. Town attorney – Grandfather does not abstain from Public Safety

Application # 40-12-23 Kathleen Lippi & Robert Ducker

Applicant is seeking a variance from Article 3 Section 304.2 for relief for a carport 36.06 feet from Poplar Ridge Rd. and 42.16 feet for a farmer's porch facing Milford Ave. The applicant also wishes to remove an existing non-conforming shed to improve the aesthetics of the property.

Property is located at 49 Milford Ave. Map 40 Lot 12

Robert Ducker with his mother Kathleen Lippi, came before the Board to present the additional information the Board requested at last month's meeting in regard to his proposed farmer's porch and carport for his mother for safety concerns.

Findings of Facts:

1. Remove front Shed

2. Plan is clear

Motion: Chairman Lees conducted a straight up vote, the requested Variance Article 3 Section 304.2 of the Town of Freedom Zoning Ordinance be granted. Motion carried 5-0.

Application # 24-14-23 Paul & Joy Nowak

The applicant is seeking to permit a previously constructed foundation drain within the shoreland buffer. Applicant is seeking a Special Exception from Article 3 Section 304.6.3 for erosion control.

Property is located at 181 Haverhill St. Map 24 Lot 14.

Jim Rines from Horizons presented this application. Chairman Lees recapped the concerns from last months meeting as to why this application was continued. He was able to obtain clarification from the Town's attorney, who was able to clarify that the drain was not a concern for this application and that the Board should need only address the erosion control. Jim noted the site is stabilized and that they had received the Shoreline Permit issued by NHDES. Permit approved on April 21, 2019 and expires April 29, 2026.

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

A- 5-0 motion carried
C- 5-0 motion carried
H- 5-0 motion carried

J- 5-0 motion carried
K- 5-0 motion carried
L- 5-0 motion carried

Conditions:

1. Per Plan titled Zoning application Prepared for Paul Nowak, dated March 13, 2023.

Findings of Facts:

- 1. Erosion in Place – Site stabilized**
- 2. Permit from state received.**

Chairman Lees made the motion to approve Application # 24-14-23 Paul & Joy Nowak Special Exception from Article 3 Section 304.6.3 for soil erosion control as shown on plan dated March 13, 2023 – Zoning application prepared for Paul Nowak. Motion seconded by Pam; Motion passed 5-0.

Application # 37-7-23 Lindsey Archila & Denise Savoie

Applicant wishes to add an attached 24 by 28 two car garage with finished space overhead. Applicant is requesting the following:

Variance Article 3 Section 304.5 Table

Variance Article 9 Section 906.1 Front Yard Setback

Variance Article 9 Section 906.2 Side yard Setback

Special Exception Article 3 Section 304.6.3 Erosion Control

Special Exception Article 7 Section 703.05 Any cutting between 75 and 300 feet of the reference line

Property is located at 291 West Bay Rd. Map 37 Lot 7.

Lindsey presented her plans and how they had changed now that they are looking to move here full time and need the space to work from when they are here. They can not push to the other side of the property as that is where the leach field is. If they were to attach it to the house they would have egress issues so that was also not an option.

Chairman Lees asked about the trees. Lindsey had a plan put together for that. She believes 3 trees near the road, maybe 4. They want to keep as many as possible. They do have an approved Shoreland Permit also.

It was asked when the house was built, 2020. For that they had to receive a front and side yard variance as well as erosion control. The board comments that this is extremely close to the boundaries. The whole garage is entirely in the setback, so it is all unpermitted use.

Chairman Lees agrees with Pam and has a hard time agreeing to this application.

Lindsey asks if the board sees any place on the lot where a garage could go as it is a non-conforming lot. Chairman Lees and Pam state no. Karl is unsure of a smaller garage either as it will still be in the setbacks.

Denny is concerned that this was not addressed in 2020 and that would have been a better time to have approached the entire design. Lindsey said at the time they were rushing and wanted to be as minimally impactful as possible so they went with the home only.

Chairman Lees states back then they may have been able to push the home closer to the shoreline setback in order to include a garage. They may have lost a deck but gained the garage.

Abutter Nancy Trumbini of 287 West Bay Rd spoke in opposition, as she previously had agreed to the current home being built with a variance and she does not wish to give even more property to the applicant. She does not want other neighbors to get the idea that they can also seek variances and such and ruin the appeal of the neighborhood even further.

Applicant withdrew application without prejudice.

Karl made a motion to accept withdrawal without prejudice, Peter seconded. Motion passed 5-0.

Karl made a motion for a five-minute recess. All were in favor.

Chairman Lees introduced to the Board Daniel Footit, new alternate who has not yet been sworn in but was allowed by Board to sit with the rest of the board members for the remainder of the meeting.

Application # 51-33-23 Pamela Clemons-Keith, Barry H. Keith, and John L. Manning DBA PB&J Company

Applicant wishes to appeal an administrative decision from Article 7 Section 702 for change in non-conforming use. Applicant is seeking to have one bedroom apartment on one floor and six offices on another. Applicant is requesting the following:

Appeal for a Variance from Article 7 Section 702

Property is located at 11 Elm St. Map 51 Lot 33.

Pamela stated that they have an interested buyer for the property, but the interested buyer will not make an offer unless the variance is approved for the one-bedroom apartment and six offices on the other. When the building was originally purchased Pam stated they received a variance for 11 offices in the building. In 2000, they were granted an option for 2 one-bedroom apartments on the second and the third floor. They would like these options to remain available for future buyers. Denny and Peter inquired as to what the plans provided to the Board with the application showed. The plans represented the buildings current use. There are 5 offices on the second floor and the third floor has 5 offices and a conference room. Septic design is for a store and a 2 bedroom apartment, yet Pam has approval that states for offices. The Board does not believe they can grant a variance on a variance. Chairman Lees noted the septic approval on file has a capacity of 400 gallons per day. Dry goods store accounts for 150, 1 bedroom apartment would be 225 which leaves 25 gallons for the remaining floor.

Abutter Barbra McEvoy stated that the apartments redone next door do not have laundry which could be an option.

Jim Rines states that DES does not specify the restrictions other than that a one-bedroom is 225 gallons and 2 or more is 150 gallons a day per bedroom.

Karl asked what Pam has approval for right now, which she stated is 11 offices. Chairman Lees states she could keep the store, have one one-bedroom apartment and one large office.

Pam wishes to continue the application in order to discuss with her realtor and others in her team.

Chairman Lees made a motion, seconded by Denny to continue this application until May 23rd; Motion passed 4-0-0.

Application # 30-13-23 Benjamin J. McKillop

Applicant wishes to repair and replace existing retaining walls and steps, as well as construct new retaining wall and stairway to the shoreline. Applicant is requesting the following:

Variance Article 3 Section 304.5 Table

Variance Article 9 Section 906.3 No portion of the enlargement can exceed the height of the existing non-conforming structure (retaining wall)

Special Exception Article 3 Section 304.6.3 Erosion Control

Property is located at 22 Marjorie Point Rd. Map 30 Lot 13.

James Hayden of Horizons Engineering represented the applicant to present the proposed changes to the existing wall and steps. Jim presented the Board with pictures of the site in order to better understand what is currently onsite.

Points discussed:

Replacing both walls one higher on property and one lower towards the shoreline.

Raising the height of the landscape wall.

11.6' from lot 30-14, 8.6' from the other

They will be bringing in fill for seating area

Remove current stairs, replace with wooden stairs

A year ago, they came to ZBA to move garage, attach it to the house and put a 2nd floor on, now the garage is staying. Under the variance that was granted at that time they are just putting the second floor on and they would like to spruce up the yard under this proposal.

No Abutters or public present for comment.

The Board elected to vote straight up for both Variances: Passed 5-0.

Variance from Article 3 Section 304.5 Table

1. 5-0 Motion Carried

2. 5-0 Motion Carried

3. 5-0 Motion Carried

4. 5-0 Motion Carried

5. A. 5-0 Motion Carried

i. 5-0 Motion Carried

ii. 5-0 Motion Carried

Conditions:

1. Per Plan titled Zoning Application Prepared for Benjamin McKillop. Dated 4/10/23 no revisions.

2. All State Permits

Findings of Facts:

1. Replace most walls – clean plan

2. Walls are leaning – Shoreland Permit/Wetland Permit

3. Walls a bit taller

Variance from Article 9 Section 906.3:

1. 5-0 Motion Carried

- 2. 5-0 Motion Carried**
- 3. 5-0 Motion Carried**
- 4. 5-0 Motion Carried**
- 5. A. 5-0 Motion Carried**
 - i. 5-0 Motion Carried**
 - ii. 5-0 Motion Carried**

Conditions:

- 1. Per Plan titled Zoning Application Prepared for Benjamin McKillop. Dated 4/10/23 no revisions.**
- 2. All State Permits**

Findings of Facts:

- 1. Replacing most walls – clean plan**
- 2. Walls are leaning – Shoreland Permit/Wetland Permit**
- 3. Walls a bit taller-wooden**

Special Exception Article 3 Section 304.6.3

- A. 5-0 motion carried**
- C- 5-0 motion carried**
- H- 5-0 motion carried**
- K- 5-0 motion carried**
- L- 5-0 motion carried**

Conditions:

- 1. Per Plan titled Zoning Application Prepared for Benjamin McKillop. Dated 4/10/23 no revisions.**
- 2. All State Permits**
- 3. Erosion Control shall be installed prior to any earth moving and shall remain in place until construction is complete and site is stabilized.**

Findings of Facts:

- 1. Erosion control on Plan**
- 2. In Place until completely stabilized**

Motion: Karl 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. Pam seconded the motion; Motion carried 5-0.

Application # 24-13-23 DJH Investment Trust

Applicant seeks a special exception from Article 3 Section 304.6.3 Erosion Control related to the expansion of the existing driveway, construction of a fire pit and the construction of a porous grass path to the house, and walkways as shown on the plan.

Property is located at 173 Haverhill St. Map 24 Lot 13.

James Hayden of Horizons Engineering represented the applicant to present the requested Special Exemption for the expansion of the existing driveway, construction of a fire pit and the construction of a porous grass path to the house, and walkways as shown on the plan. They have applied for a Shoreland Permit with the State, waiting on approval.

Karl asked how many times this site has been brought in front of the Board, Jim states about 5 times. Karl also asked if there is anything from the previous applications that would prevent the Board from approving

the current application. Jim stated no. Chairman Lees was concerned that if the current owner was to sell and a new owner wished to pave the driveway if the impervious percentages would still be met. Jim and James did the calculations and verified that it would still be under as it would be at 16%.

No public or abutters present for comment.

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

A-5-0 motion carried

C- 5-0 motion carried

H- 5-0 motion carried

K- 5-0 motion carried

L- 5-0 motion carried

Conditions:

1.Per Plan titled zoning Board of Adjustment Plan for DJH Investment Trust.

2. Dated 4/10/2023

3. All State Permits

4. Erosion Control shall be installed prior to any earth moving and shall remain in place until site is stabilized.

Findings of Facts:

1. Erosion Control on plan

2. Erosion Control shall be installed prior to any earth moving and shall remain in place until site is stabilized.

Motion: Straight vote. Chairman Lees motions to approve the request for Special Exception under Article 3, Section 304.6.3 for Erosion Control for DJH Investment Trust, Karl seconded; Motion carried 5-0.

Miscellaneous

- **Communication and miscellaneous.**

There was no mail.

It was agreed to postpone the election of a Chair and Vice Chair until May's meeting.

There being no new business to come before the Board, the Motion by Pam, seconded by Denny that this meeting adjourns; Motion passed unanimously.

The meeting adjourned at 10:10 p.m.

Respectfully Submitted,
Lindsay Pettengill,
Recording Secretary