

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

Freedom Zoning Board of Adjustment: **August 27, 2024**

Present: Karl Ogren, Peter Keenan, Vice Chair Craig Niiler, Denny Anderson, Daniel Footit (A), Pam Keith (A), Gary Williams, Stacy Bolduc Recording Secretary

Absent: Chairman Scott Lees, Tim Cupka(A) and Jacob Stephen (A), Lindsay Pettengill,

Public: Edward & Wendy Batista, James Guido, Romy Maurer, Cathy DiGiampietro, Tracy A. Juda, Jory Bailey, Jeff Nicole, Melissa Florio, Bryan Berlind, Michael Malaney, Brain Taylor, Gerald Brown, James Guido, Alan Fall, George Conroy, Theresa Vitale-Conroy, Edward Hennessy and Harriet Fishman.

Vice Chair Craig 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.

**Public Meeting**

**Karl Ogren made the motion, seconded by Pam Kieth, to approve the meeting minutes of July 23 2024, with a correction. All were in favor. APPROVED**

**Corrections #1. The minutes need to reflect that the board elected Karl as the Chair of the meeting.  
#2. Change Chairman Lees to Ogren.**

**The following applications will be heard:**

**Application # 29-5- 24- Edgar Batista**

Applicant seeks to permit build a garage.

Applicant is requesting the following:

Variance Article 3 Section 304.5 Sideline Setback

Variance Article 3 Section 304.2 Rear Yard Setback

**Property is located at 444 Huckins Rd Map 29 Lot 5**

**Application# 24-3-24 DiGiampietro/Juda**

Applicant is seeking to relocate and existing, non-conforming detached garage within the front yard setback, as well as the installation of a new permeable patio/firepit within the side and rear setbacks. The existing driveway will be reconfigured to reduce the slope and to access the new garage location. Tree cutting will be done within the 0-75' and the 75-300' zones. See application for more details.

Applicant is requesting the following:

Variance Table 304.5

Special Exception Article 3 Section 304.6.3.1

Special Exception Article 7 Section 704.4

Special Exception Article 7 Section 704.5

**Property is located at 2 Pauli Point Road**

**Application 23-40-24 Michael & Patsy-Jo Malaney**

An existing shed, mistakenly constructed without a permit, to remain in place being 10.3' from the sideline where 30' is required, and 23.9' from the rear line, where 40' is required.

**Applicant is requesting the following:**

Variance Article 3 Section 304, Table 304.5 sideline & rear setback.

**Property is located at 13 Summer St.**

**Map 23 Lot 40**

**Application 26- 3-1-24 Edward J Hennessy and Harriet J. Fishman**

The applicant is proposing an outdoor shower and dressing area in addition to Extending the stair landing platform by 29 inches and adding a walkway around the stair landing, and between the shower and stairs.

**Applicant is requesting the following:**

Variance Article 3 Section 304 Table 304.5 sideline setback.

**Property is located at 384 Pequawket Trl.**

**Map 26 Lot 3-1**

**Application 31-8-24 George Conroy, Theresa Vitale-Conroy and Cody F. Conroy**

Applicant is requesting an **Equitable Waiver of Dimensional Requirements** for Article 3 Section 304.2. (Front yard setback).

To reduce the setback from 50' from a right of way to 38.8'

**The property is located at 462 Ossipee Lake Rd. & East Danforth Rd.**

**Map 31 Lot 8**

**Application# 12-29-24 Jeff Nicoll & Melissa Florio-Nicoll**

The applicant is proposing to construct a 1,428 sq. ft. barn with a 900 sq. ft. DADU (detached dwelling unit).

Applicant is requesting the following:

Special Exception Article 11 Residential Uses Section 1104.5.1 Accessory Dwelling Units.

**The property is located at 85 Watson Hill Rd.**

**Map 12 Lot 29**

**PUBLIC HEARING**

**Application # 29-5- 24- Edgar Batista-**

Edgar came before the board to present the updated plan from last month. Karl reviewed what was to be updated on the plan for the board.

- The shed needed to be removed from the plan.
- Show the house as it is not proposed.
- The existing needed to show the porch.
- The garage was approved 10 years ago, and they are looking to relocate it. The distances had to be clarified, and they needed to provide an existing and proposed plan.

Nobody expressed any concerns about the application. The carport was briefly discussed, and its explanations for the carport are all on the plan.

**Questions from the abutters or public:**

Wendy Batista reminded the board that their neighbor has no issues with their proposed plans.

The board elected to review the Variance worksheet for Article 3, Section 304.5 and 304.2.

The board elected to take one vote for both variances. (Pam abstained from voting and Dan voted instead).

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 site plan with proposed garage for 444 Huckins Rd. dated 8/27/2024**
2. **Foundation location certified by a licensed survey**

**Findings of Facts:**

1. **Garage was approved a while ago**
2. **Need to relocate the garage**
3. **No runoff to the lake**

**Motion: Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variance from Articles 3, and Sections 304.5 and 304.2 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

Chairman Niiler explained the 30- day appeal period and the Variance expires 8/27/2026

**Application# 24-3-24 DiGiampietro/Juda (Pam Keith voted on this application Dan did not).**

The board reviewed the FCC comments for this application. Romey reviewed the changes in the application regarding drainage, stormwater, and trees. The lawn area was removed, and landscaping that does not require fertilizing was added. Craig asked the board if they had any questions. Craig asked Romey to point out the trees that would be planted in the first 50’.

The board was satisfied with the planting plan. Karl expressed concern with filtration around the garage. He would have liked more trees planted, but they are putting more trees back than they are taking.

**Other points discussed:**

- Work on the stairs should happen during the drawdown or use a boom.
- There were no abutters opposed to the project.
- The generator is on the plan (it is not considered a structure).
- The newly proposed plan addresses the concerns raised last month when the garage drainage was discussed.
- Erosion control shows silt fence and silt sock on plan L4.
- Trees are good.
- Variance 304.5 is for relief for the garage for the front yard setback (41.5’), the patio, and the grill island, which is 7 ft.

The board elected to review the Variance worksheet for Article 3, Section 304 for setbacks.

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.**

**Conditions:**

1. Per plan dated 7/3/2024
2. Pin the garage/survey patio
3. Raised infiltration system
4. Obtain all State and local permits

**Findings of Facts:**

1. Front Yard is better than before
2. Dealing with water in a better way
3. 41.5 front yard setback
4. Patio is 7' from side and 23' from ref water line

Chairman Niiler explained the 30- day appeal period and the Variance expires 8/27/2026

Chairman Niiler made a motion to approve, seconded by Karl to approve a variance from Articles 3 Section 304.5 sideline setback All were in favor. **APPROVED 5-0**

**Special Exception Article 3 Section 304.6.3.1, Article 7 Section 704.4 and 704.5**

- |                              |                              |
|------------------------------|------------------------------|
| <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:**

5. Per plan dated 7/3/2024
6. Stair work done during drawdown or with

**Findings of Facts:**

1. Replanting Plan water is a problem
2. Erosion control on the plan
3. Overall, tree points are increasing over all on the lot.

**Chairman Niiler made a motion to approve, seconded by Karl to approve Special Exceptions from Articles 3 Section 304.6.3.1, and the Special Exceptions from Article 7 Section 704.4 and 704.5. All were in favor. APPROVED 5-0**

Chairman Niiler explained the 30- day appeal period, and the Special Exception expires 8/27/2026.

**Application 23-40-24 Michael & Patsy-Jo Malaney**

An existing shed, mistakenly constructed without a permit, to remain in place being 10.3' from the sideline, where 30' is required, and 23.9' from the rear line, where 40' is required.

**Applicant is requesting the following:**

Variance Article 3 Section 304, Table 304.5 sideline & rear setback.

**Property is located at 13 Summer St.**

**Map 23 Lot 40**

Brian Berlind came before the board to present the application and gave the history of the lot. The lot was formed in 1969 and is a non-conforming lot. It is .53 acres, which is 74% too small. The variance is for a shed to remain in place, being 10.3' from the sideline, where 30' is required, and 23.9' from the rear line, where 40' is required. Brian explained this application maintains a scenic vista down the driveway in both directions and is more aesthetically pleasing in the rear of the property than seeking a variance to place it between the home and the road. The shed does not hinder anyone's view or pose any safety concerns for emergency services.

The criteria for section II, Brian believes, is met because all the lots are non-conforming, and the shed will not affect the character of the neighborhood. If the applicant had to move the shed to another location, it would be costly, and could require a variance, and be less aesthetically pleasing.

There will be no negative impact on surrounding property values.

This shed is for parking snowmobiles, lawnmowers, tools, and kid's toys, allowing the applicant to enjoy their front yard.

Craig asked if the board had any questions.

Denny commented that the association established setbacks for the homes in the association before the town had zoning. Denny added that he did not think we would be sitting here if a permit was pulled. Karl added that if they had pulled a permit, they would have had to come before the ZBA for a variance.

The applicant said the shed is 16x24 in the back of the house. It holds snowmobiles, a golf cart, and a jet ski. The heat pump is for the jet ski. Craig explained to the board that they have to look at this request and ask whether this is a variance the board would have granted based on their options. There is another shed on the property that holds garden tools.

Abutter Gerald Brown has no problem with the shed. He was consulted before the shed went in and said he was fine with it. There are no know problems with the shed for the neighbors.

Pam said if the plan had come before the board before it went up, she would have expressed concern with the size of it for the lot size. Karl and Craig said they would move the shed closer to the house. The after- the- fact permits are difficult. Craig asked how the board felt about the other shed. Karl responded that we would have asked for it to come down because it's a good size structure. Pam commented that the shed is over half the size of the house. Karl asked if there was any water in the shed. Applicant responded no, just a heat pump and there was a half loft.

Karl questioned if the board would have approved this application with the currant measurements if it had come before the board? The answer is no because it could have been put somewhere else to be more conforming.

The applicant said the shed is on the septic's edge- as close as it can get. Gerald Brown said the shed is not hurting anything and it does not look bad where it is, and his property is impacted the most by it. The heat pump system is on the back of the shed. Craig asked if any abutters or public would like to comment. There was no public comment.

**Points discussed:**

- Penalties
- The septic tank is on the other side of the house.
- The board would have looked for an alternative that would have had less impact on the sideline.
- There is no value in moving the shed, though the current could be better.
- Karl questioned if a lawyer should be consulted.
- Continuance is an option.

**Craig reviewed the options:**

1. Let the building sit where it is and ask for the smaller shed to be removed.
2. Deny the application
3. Call legal/NHMA to see what the options are

**Karl made a motion to continue this application until next month, motion seconded by Pam; motion passed unanimously.**

The applicants need to submit a plan showing where the septic is.

Karl stated the plan needs to be submitted by September 9<sup>th</sup> the deadline for the September meeting.

Craig recessed the meeting for two minutes at 8:38pm.

**Application 26- 3-1-24 Edward J Hennessy and Harriet J. Fishman**

The applicant is proposing an outdoor shower and dressing area in addition to Extending the stair landing platform by 29 inches and adding a walkway around the stair landing, and between the shower and stairs.

**Applicant is requesting the following:**

Variance Article 3 Section 304 Table 304.5 sideline setback.

**Property is located at 384 Pequawket Trl.**

**Map 26 Lot 3-1**

Mr. Hennessy presented his plan for the proposed outdoor shower. The shower water will be plumbed into the septic system per the request of the State. If soap is used, the water must go into the septic system. Karl clarified what is being granted a variance. Craig asked how close the changing area wall and the stairway landing were to the sideline. Mr. Hennessy responded more than 17'.6". The shower will not be covered. It was determined that all setbacks were met, and there were no objections to the project.

The board elected to review the variance worksheet for Section 3 Article 304 Table 305.5  
**(Pam abstained from voting and Dan voted instead).**

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.**
6. The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
7. 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.**

**Conditions:**

1. Per proposed site- plan dated 8/27/2024
2. Obtain all local and State permits
3. No closer than current distance from side back

**Findings of Facts:**

1. No closer than existing sideline setback

**Motion: Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Variance from Articles 3, and Sections 304.5 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

Chairman Niiler explained the 30- day appeal period and the Variance expires 8/27/2026

**Application 31-8-24 George Conroy, Theresa Vitale-Conroy and Cody F. Conroy (Pam is voting on this application. Dan is not voting.)**

Applicant is requesting an **Equitable Waiver of Dimensional Requirements** for Article 3 Section 304.2. (Front yard setback).

To reduce the setback from 50' from a right of way to 38.8'

**The property is located at 462 Ossipee Lake Rd. & East Danforth Rd.**

**Map 31 Lot 8**

Alan Fall came before the board to request an equitable waiver on behalf of the Conroy's. He gave a brief history of the property and explained that the equitable waiver request was the result of a mistake made by a previous Zoning Officer. The Zoning Officer helped Mr. Conroy with the site where the garage would go and made a mistake on the setback concerning the corner of the garage in the town's right of way. The variance is for Article 3 Section 304.2 The ordinance is 50' from the right of way, but the corner of the garage corner is 38.8'.

Craig reviewed the state's requirement for granting an Equitable Waiver of Dimensional Requirements.

It was determined that Mr. Conroy's request met the criteria for an equitable waiver because of the fact the Zoning Officer at the time measured the distance from the wrong spot. There was no malicious intent, and mistakes were made by the Town and its agents at no fault of Mr. Conroy, as he acted in good faith in reaching out to the town for guidance on where the setbacks are.

**The shorefront permit has been applied for and the site will be stabilized.**

**The board unanimously agreed to grant Mr. Conroy an Equitable Waiver of Dimensional Requirements for the garage as it currently stands: 5-0.**

**Application# 12-29-24 Jeff Nicoll & Melissa Florio-Nicoll**

The applicant is proposing to construct a 1,428 sq. ft. barn with a 900 sq. ft. DADU (detached dwelling unit).

Applicant is requesting the following:

Special Exception Article 11 Residential Uses Section 1104.5.1 Accessory Dwelling Units.

**The property is located at 85 Watson Hill Rd.  
Map 12 Lot 29**

Jeff Nicoll and Melissa Florio came before the board to ask for a Special Exception for Article 11 Residential Uses Section 1104.5.1 Accessory Dwelling Units. Jeff reviewed for the board both the existing plan and the proposed plan.

**Points discussed:**

- The distance between the house and the barn is 185’
- The lot that they are building on is 26.9 acres
- The existing single-family home is conforming and the only dwelling on the property.
- The proposed barn/ADU (attached dwelling unit) will comply with all setbacks and building/fire codes
- Septic plan has already been approved.
- The barn is a traditional barn. It will be used for tractor storage and will have a one-bedroom apartment over it.
- Will have a separate address as required
- Two parking spots and the lot will not be subdivided

**Dan is voting on this application. Pam is not voting.  
Special Exception Article 11 Section 1104.5.1**

<b>A- 5-0 Motion Carries</b>	<b>G- 5-0 Motion Carries</b>
<b>B- 5-0 Motion Carries</b>	<b>H- 5-0 Motion Carries</b>
<b>C- 5-0 Motion Carries</b>	<b>I- 5-0 Motion Carries</b>
<b>D- 5-0 Motion Carries</b>	<b>J-5-0 Motion Carries</b>
<b>E- 5-0 Motion Carries</b>	<b>K-5-0 Motion Carries</b>
<b>F- 5-0 Motion Carries</b>	<b>L-5-0 Motion Carries</b>
	<b>M-5-0 Motion Carries</b>

**Motion: Chairman Niiler made a motion that, based on the foregoing findings of fact, the requested Special Exception from Articles 11, and Sections 1104.5.1 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

**Chairman Niiler explained the 30- day appeal period and the Special Exception expires 8/27/2026.**

**PUBLIC MEETING**

**New Business:**

James Guido came before the board to read a statement he had prepared regarding the outburst at last month’s meeting. He requested the minutes reflect his statement.  
Chairman Niiler asked that he email the statement to the office, and it will be attached to the minutes as part of the record.

The board members who were present for the meeting in question remember it differently than described in Mr. Guido’s statement to the board. No board member that night or the recording secretary witnessed the accusation that the chair made a derogatory comment about Mr. Guido and his wife.



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

The meeting was adjourned at 10:00 p.m.

Respectfully Submitted,  
Stacy Bolduc  
Town Administrator