

**Zoning Board of Adjustment**  
**PO Box 227**  
**Freedom, NH 03836**

Freedom Zoning Board of Adjustment: **October 28, 2014**

**Members Present:** Chairman Scott Lees; Karl Ogren; Tim Cupka; Jake Stephan; John Quigley and Denny Anderson, Alternates.

Others Present: Linda Farinella, Recording Secretary; Ned Hatfield, Zoning Officer

Chairman Lees called the meeting to order at 7:00 pm.

Notification of this meeting was posted at the Freedom Town Office, Freedom Post Office and published in the Conway Daily Sun.

Chairman Lees introduced the Board to the public.

Motion by Chairman Lees, seconded by Ogren to accept the minutes of the September 23, 2014 meeting as written. The motion passed.

Motion by Cupka, seconded by Quigley to accept the minutes of the September 18, 2014 meeting as written. The motion passed.

During the meeting the following cases were heard:

- Case #24-6-1-14 Paul and Elizabeth Pappas**
- Case #23-7-14 Mark and Susan Goldstein**
- Case #4-36-1-14 Franklin and Deborah Sanborn**
- Case #7-5-1-14 Sherwood Forest, LLC**
- Case #1-18-14 George Hecker**
- Case #4-29-14 Robert Bergevin and Pauline Dunlap**
- Case #22-28-14 Sandra M. Drea**
- Case #22-28-1-14 Sandra M. Drea**

Chairman Lees invited **Case #24-6-1-14 Paul and Elizabeth Pappas** to approach the board with a continued request for a special exception under Article 3 Section 304.6.3.1 and a variance under Article 3 Table 304.5 of the zoning ordinance to install stone wall, replace stones at beach, replace brick patio, and add stepping stones all within the setbacks and requiring erosion control at 121 Haverhill Street.

Quigley sat in for regular member Niiler.

This hearing was continued to the October meeting at the August hearing. A letter was received requesting a continuance to the November meeting. Motion by Ogren, seconded by Cupka to continue this hearing to the November meeting. The motion passed unanimously. A letter will be sent to the applicant noting the continuance with a November 10th, 2014 deadline.

Chairman Lees invited **Case #23-7-14 Mark and Susan Goldstein** to approach the board with a continued request for a special exception under Article 3 Section 304.6.3.1 and a variance under Article 3 Table 304.2 of the zoning ordinance to replace existing stone retaining wall including relocating, reorganizing and replacing stones and stairs within the setbacks and requiring erosion control at 28 Sunset Road.

Quigley sat in for regular member Niiler.

Mr. Goldstein explained that he is building a house at 28 Sunset Road and that it is common to landscape. There was a shutdown placed on the work for an unknown reason; thinking that trees had been removed, that were not.

Goldstein spoke with Selectmen Neal Boyle. Boyle said he would speak with his fellow Selectmen. Goldstein received a call from Hatfield stating do not continue with wall but finish the landscaping. Goldstein attended a ZBA meeting with his Landscaper Park and the ZBA stated he could move forward with the wall. A letter was received by Goldstein from the ZBA reiterating what was requested from the applicant. Mark McConkey was hired by Goldstein and drew up plan showing existing conditions.

Goldstein stated that Boyle had met with the Selectmen and they had decided there was no need to write a letter that was requested by the ZBA.

Goldstein noted that there have been major storms and the work done has prevented run off, it is working terrific; it was done all locally and he doesn't know why he has to be before the board.

Ogren asked if the wall stone work is done. Goldstein replied yes; all three selectmen reported to Ned that he could complete the landscaping then come back to the ZBA with an as built.

Ogren asked Goldstein why he states he does not have to be here. Goldstein stated that the Selectmen told him to continue the landscaping, the State of NH does not need a permit and he has accommodated the board with the plan requested. Chairman Lees also questioned why the applicant is not sure why he is here. Goldstein responded that he has done everything asked of him and paid for a landscaping permit. Goldstein stated that Hatfield said if the original application had included the landscaping it should be still included; there was grass before, he has presented a full plan, paid his dues and the project is complete.

Chairman Lees noted that Article 3 Section 304.6.3.1 of the zoning ordinance requires that this project be before the board.

Chairman Lees asked if there were any questions from the board.

Quigley, Ogren and Stephan all inquired similarly of Goldstein as to why he thought he had permission from this board to go ahead with the wall; all recalling that Goldstein had said the Selectmen gave him permission, which is why they asked for a letter from the Selectmen stating this.

Goldstein apologized for any breakdown of communication, it was just loose stone placed on the wall at an angle. Goldstein stated he had the permission to do the landscaping and wall.

Chairman Lees stated is unfortunate that three members remember it differently. Goldstein asked what he needs to do at this point.

Chairman Lees and Anderson were of the opinion that this should be treated as if the board would have approved it, in this manner, before the work was done.

Chairman Lees and Ogren both feel the need to verify if it is the same and would like to do a site visit. Ogren commented that they should have been looking at it before versus a proposed plan. Ogren asked Goldstein the square footage of the wall before. Goldstein responded it is identical, brought back to original.

Ogren asked how much material was brought it. Goldstein responded zero. Ogren asked about the rocks and under fill. Goldstein said he did have a little brought it, a bit of crushed stone. Ogren recalled the landscaper planning to bring in yards of basketball sizes stones. Chairman Lees stated this is why a site visit is warranted.

Goldstein stated he feels this has been going on for a very long time, three months. He stated he did the three things the board asked of him in their letter; he has done all he can do. If he had known the board needed more details he would have brought his landscaper.

Anderson wanted it noted that this is an after-the-fact application, the board is not busting him, and there is frustration on both sides. Goldstein stated he wished this issue had been addressed in the letter. Chairman Lees told Goldstein that he needs to understand that some application could take up to a year. This board had bent over backwards to get his original project moving swiftly and Lees is upset with being accused of delaying the process.

Stephen stated that the letter from the board to Goldstein asked for three things, the letter from the Selectmen was not produced.

Chairman Lees told Goldstein that with the site visit new questions can come up.

Chairman Lees asked for abutter or public comment, there were none.

Stephan noted that there is no detail of the silt fence that was installed on the plan. Cupka agreed that should be added to the plan and would be satisfied if the wall has been done in kind and within the same footprint.

Chairman Lees asked that Farinella send a copy of the previous application's plan, showing what was on the site, be sent to the board. This will be used to compare what is presently on the site. Goldstein gave his permission to the board to do so on his property. Chairman Lees and Ogren asked to have noted the square foot coverage of the existing wall and steps.

Goldstein asked if he was required to return to the board. Chairman Lees stated no, but if a question arises that needs an answer it could be delayed to the next month.

Goldstein reiterated that the wall is the same footprint. The rocks had sunk in and have been re-secured at a slightly different angle. The slope of the yard did not change, just cleaned up.

Motion by Chairman Lees, seconded by Ogren to continue this hearing to the November 25<sup>th</sup> meeting with a submittal deadline of November 10<sup>th</sup>.

Chairman Lees invited **Case #4-36-1-14 Franklin and Deborah Sanborn** to approach the board with a request for a special exception under Article 3 Table 304.4 Exception Use 5 of the zoning ordinance to change from single family unit to multi family unit and continue retail store at 169 Porter Road.

Quigley sat in for regular member Niiler.

Mark McConkey, Jack Pyne and Ralph Floria, agents, explained a proposal to purchase the old hardware store at 169 Porter Road. The existing building has retail space and a one-bedroom apartment. The application presented is for a request to add an additional one-bedroom apartment. The existing septic is working fine. McConkey has done a test pit to confirm that the lot can meet the additional loading and it can. The property is falling into disrepair and this proposal would beautify the area.

Chairman Lees asked for abutter or public comments. Les Babb, public, noted he lives close to the property and is in favor of the project, it is good for the town and the young people in it.

McConkey submitted a letter with the septic findings. Chairman Lees asked that it be stamped with his seal and returned to the ZBA.

Chairman Lees closed the hearing to public comment.

The board reviewed the special exception worksheet for Article 3 Section 304.4:

- |        |  |
|--------|--|
| A. 5-0 | H. 5-0   |
| B. 5-0 | I. 5-0   |
| C. 5-0 | J. 5-0   |
| D. 5-0 | K. 5-0   |
| E. 5-0 | L. 5-0The applicant agreed to comply with sign ordinance |
| F. 5-0 | M. 5-0   |
| G. 5-0 |  |

Motion by Chairman Lees seconded by Cupka that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.4 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Mark McConkey shall submit to the board the septic findings letter submitted stamped with his seal.
2. Necessary State of NH Subsurface system approval shall be successfully obtained; must receive 2-bedroom with dry goods store approval.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees invited **Case #7-5-1-14 Sherwood Forest, LLC** to approach the board with a request for a special exception under Article 3 Section 304.6.3.2 to replace sona tubes in the shorefront setback requiring erosion control at 65 Robin Hood Lane.

Quigley sat in for regular member Niiler.

Chairman Lees read the recommendation of the Freedom Conservation Commission.

Les Babb, agent, explained that the present building on the lake will be razed and replaced. The sona tubes closest to the water are to remain so as not to disturb the 40% slope to the beach. The silt fence and sona tubes will be placed at the tubes closest to the water. Babb spoke with Frank Richardson at the State of NH and was told that no state permit is required for this project if done by hand.

Ogren asked if the building will be the same footprint. Babb responded yes, drip edge to drip edge will be 29'6" x 33'6".

Chairman Lees asked for abutter or public comment. There was none.

Chairman Lees stated that a silt fence detail will need to be submitted along with its location on the lot. The board also asked for dimensions of the building to be placed on the plan, signed and dated.

Jean Marshall, public, asked why the zoning officer could not approve this application. This land slopes toward the water that is why it is before this board.

Chairman Lees closed the hearing to public comment.

The board reviewed the special exception worksheet for Article 3 Section 304.6.3.2:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Quigley that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.3.2 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Applicant shall submit a revised plan showing erosion control location with detail and building dimensions to the drip edge.
2. All necessary State of NH permits shall be successfully obtained.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees invited **Case #1-18-14 George Hecker** to approach the board with a request for a special exception under Article 3 Section 304.6.3.1 and a variance under Article 4 Section 406 to

replace a septic system within 125ø of a wetland and requiring erosion control at 5 Kenison Drive.

Quigley sat in for regular member Niiler.

Mark McConkey, agent, approached the board with an appointment of agent form. McConkey explained the unusual shape of the lot that has an existing 3-bedroom cottage with septic. The property is being sold and during inspection it was discovered that the septic may not be contained all on the lot. The potential new owner wanted to be sure that an adequate system could be installed on the lot. McConkey noted that the plan has not yet been submitted to the state subsurface bureau nor has he submitted the erosion control detail. Any tree removal will not be within 75ø of the water.

Chairman Lees asked if the system will fit within the property. McConkey responded yes. Chairman Lees asked for a silt fence detail.

Chairman Lees asked for abutter or public comment. Alan Kenison, abutter, stated his concern that his property is on the slope down hill from Heckerø's property, adding he has a moisture problem in his cellar. Chairman Lees asked McConkey to scale off the plan to find how far away Mr. Kenisonø's well point is located. McConkey responded that the field is 80ø from Mr. Kenisonø's home at its closest point. McConkey stated he understood the point was in or near the Kenison house. Chairman Lees asked if the location could be added to the plan, McConkey stated he would add it. Mr. Kenison stated his concern of restricting the relocation his well. Chairman Lees explained that wells are under State of NH jurisdiction.

Chairman Lees asked for spot grades to be added to the plan. Mr. McConkey agreed to do so.

Motion by Chairman Lees, seconded by Ogren to continue this hearing to the November meeting. The applicant will submit new plans containing spot grades, the abutterø's well and erosion control detail. The motion passed unanimously.

Chairman Lees invited **Case #4-29-14 Robert Bergevin and Pauline Dunlap** approached the board with a request for a special exception under Article 3 Section 304.6.3.1 and a variance under Article 3 Table 304.4 to cut two trees, construct a foundation and septic system up slope within the front yard setback at 6 Huntress Bridge Road.

Quigley sat in for regular member Niiler.

Chairman Lees read the recommendation of the Freedom Conservation Commission.

Mark McConkey, agent, stated this application is for a maintained property off Porter Road, along the Ossipee River. The tree grids submitted all meet the criteria with the exception of Grid #5 but there will be no work there.

The history of the property shows that it has electricity, a shed and a septic system that have supported 1-3 travel trailers. The proposed house will be placed up slope at an elevation higher than that of the top abutment of the bridge which at an elevation of 102.5ø the 1939 floor height. Chairman Lees asked if it is based on the 100 year flood plain. McConkey responded no, the

maps available are horrible. The tree line is being protected, test pits have been done. The home will be in the ground only 3-4ø

Chairman Lees expressed concern of not having the 100 year floor information to justify its location in the setback. McConkey thought the house could go closer toward the river but the owner did not want to disturb a drainage swale.

Ogren commented that he thought it was unusual for the board to push people toward the water with their building when they are asking to build further away.

Stephan commented that this is a corner lot that is considered to have two front setbacks.

Chairman Lees asked if there were abutter or public comments.

Jim Shuff, abutter, stated he has no problem with this application.

The board reviewed the variance worksheet for Article 3 Section 304.4:

1. 4 to 1 Lees opposed
2. 4 to 1 Lees opposed
3. 4 to 1 Lees opposed
4. 5 to 0
- 5Ai. 3 to 2 Lees and Cupka opposed
- 5Aii. 4 to 1 Lees opposed

Motion by Ogren seconded by Stephan that based on the forgoing findings of fact, the requested Variance from Article 3 Section 304.4 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Approval is based on plan titled øZoning Permit for: Bill & Mary Lord, 19 Jeremy Hill Road, Pelham, NHø dated 10/14/2014.
2. Building shall be no closer than 27.65øto road.

The motion passed 4 to 1 with Lees opposed. The applicant was informed of the 30-day appeal period.

The board reviewed the special exception worksheet for Article 3 Section 304.6.3.1:

- A. 5-0
- C. 5-0
- H. 5-0
- J. 5-0
- K. 5-0
- L. 5-0

Motion by Chairman Lees seconded by Ogren that based on the forgoing findings of fact, the requested Special Exception from Article 3 Section 304.6.3.1 of the Town of Freedom Zoning Ordinance be granted with the following conditions:

1. Tree stumps shall remain.
2. Necessary NH State Shoreland permits shall be successfully obtained.
3. Based on plan titled øZoning Permit for: Bill & Mary Lord, 19 Jeremy Hill Road; Pelham, NHø dated October 14, 2014.

The motion passed unanimously. The applicant was informed of the 30-day appeal period.

Chairman Lees and Anderson recused themselves from this hearing.

Quigley sat in for regular member Niiler.

McConkey understood he had a 4-member board and accepted to proceed.

Ogren invited discussion of Case #22-28-14 Sandra M. Drea and Case #22-28-1-14 Sandra M. Drea to approach the board with a request for an appeal for a variance under Article 4 Section 406 to construct a septic system or leach field within 125ø of a wetland on Intervale Ave on each lot respectively.

A recommendation was received from the Freedom Conservation Commission.

Mark McConkey, agent, asked if case #22-28-14 and 22-28-1-14 could be discussed together but voted on separately. The board members were in agreement.

McConkey explained that these two vacant wooded lots have been owned by Drea for a very long time; taxes have been paid on them for years. The property is not in the shoreland.

A memorandum from Gary Flaherty, soil scientist, dated 10/15/14 noted that his office delineated the wetlands on the plan submitted by McConkey.

McConkey stated there is a drainage ditch at the front of the property, test pits are shown on the lot with sufficient soil at 18ø.

The septic plan is being submitted to this board before the state of NH. It can meet the State's requirement of 50ø from wetlands but cannot meet the town's requirement of 125ø with poorly drained soils versus very poorly drained soils.

McConkey stated the proposed homes can meet the 10% rule. Ogren asked McConkey if wetlands can be included in the 10% coverage. McConkey replied that the calculation on the plan is regarding a state issue. Ogren asked if Article 4 Section 407 applied, McConkey stated that the lot is pre-existing, non-conforming and does not believe that would apply to these lots.

Ogren asked for abutter or public comments.

Gregory and Diane Cahill, abutters, expressed concern of how poorly the Drea lots drain. Mr. Cahill had a concern of how the water affects the area's drainage. McConkey noted that the Drea property slopes down; construction would not allow for a foundation, best case would be a footing, because there could be water at 3ø but flows away.

Scott Lees, abutter, asked to speak regarding lot #28. Mr. Lees stated he is not in favor of this configuration and hope the board will require more information. Mr. Lees has lived next to the lot for fifteen years and it has become wetter and wetter with standing water after rainfall. Mr. Lees' septic is within the wetlands, but it was built before these regulations were in place.

Mr. Lees has differing information regarding the delineation of the wetlands; Greg Howard, soil scientist, has done delineations that differ from the information of Gary Flaherty. Howard finds the soils to be spodic horizon deficient. The runoff is increasing and the swale is going directly into the lake, if Mr. Lees's septic were to fail because of water on the abutting lot it will follow that same flow into the lake.

Mr. Lees expressed his opinion that this is very premature to come before the board and feels it should be approved by the state before this board. Mr. Lees stated he is not saying that this lot is undevelopable but he would like to see a wetland approval, existing contours and the proposed house moved closer to lot #28-1. Mr. Lees also noted that he does not feel the hardship requirements were explained in the applicant's application.

McConkey first noted that the credentials of Mr. Flaherty are as good as Mr. Howard. McConkey feels it is reasonable to show the house placement and would like to come back next month with these questions addressed.

Cupka asked that a better plan be submitted for the board to take this into consideration.

Motion by Cupka, seconded by Quigley to continue this hearing to the November meeting with the applicant submitting the following additional information:

1. Confirmation/rectification of wetland area;
2. Alternate location of homes on both lots;
3. Show slopes, contours, elevation and fill.

The motion passed unanimously.

Chairman Lees returned to the board.

Meeting adjourned at 10:07 pm.