

Members Present

Paul Monziona, Chairman
Frank Rich, Vice-Chair
Tim Morgan, member– excused absence
Paul LaRochelle, Selectman’s Representative/clerk– excused absence
Thomas Lee, member

Others Present

John Dever, III, Code Enforcement Officer
Jennifer Riel, Recording Secretary
Ryan Heath, applicant
Doug Suprenant, agent for applicant
Ann Smethhurst, abutter

CALL TO ORDER

Paul Monziona, Chair called the meeting to order at 6:10pm.

APPOINTMENT OF ALTERNATES

Mr. Monziona stated no appointment of a member is necessary as there is a quorum of three members, although an appointment would be made if there were only three members present and an alternate member was present, however, none is present tonight; Mr. Monziona made an offer to the applicants for the option of postponing their public hearings until there is a quorum of greater than three members of the Board present. No applicants accepted the offer to postpone.

STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds, which the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal, but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a Variance, the Board must determine facts bearing upon the five criteria as set forth in the State’s Statutes. For a Special Exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance have been or will be met.

APPROVAL OF AGENDA

Mr. Monziona added to the Agenda a discussion of the Board members.

John Dever, III, Code Enforcement Officer stated he was informed by Thomas Varney, representative for the applicants of Case # Z19-21 and Z19-22, that the case would not be heard tonight as they have opted to continue the Public Hearing to the next regularly scheduled meeting due to only three members of the Board being present. Mr. Monziona asked that since no representative for the case is present, how would the continuance

statement be given to the applicant. Mr. Dever suggested making the recording available to Mr. Varney for the case.

Mr. Monziona made a motion to move Cases #Z19-21 and Z19-22 to the beginning of the Agenda. Mr. Rich seconded the motion. Motion passed, 3-0-0.

Mr. Rich made a motion to accept the Agenda as amended. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Mr. Monziona stated generally the Zoning Board of Adjustment is comprised of five members, with five members making the decisions; however three members present constitutes a quorum and under State statute they are able to proceed and make decisions fully. He explained two members are missing tonight and in order for applicants to get applications granted, they will need a unanimous decision by the Board. For this reason applicants are permitted to seek up to two continuances without paying refilling fees and if they choose to seek a continuance tonight, it will not use up one of the continuances permitted.

NEW APPLICATIONS

<p><u>Case #Z19-21</u> Thomas Varney, P.E., Varney Engineering, Agent for Geraldine Gaeta and Jonathan Paine, owners</p>	<p>64 Barbara Drive, Map 71, Lot 21</p>	<p>Special Exception Rural Zone (RU)</p>
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A Special Exception is requested from **Article 300, section 320 H., c.** of the Zoning Ordinance to permit the expansion of building beyond existing elevations to add a second floor, and make improvements for the foundation. The existing deck is to have a roof and screen sides added.

Mr. Monziona read the case into the record. The Board reviewed the application for completeness.

Mr. Monziona asked where the abutter list was. It was noted the abutter list for Case Z19-21 and Z19-22 are the same but it was only copied for Z19-22.

Mr. Rich made a motion to accept the application as complete. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Mr. Rich made a motion to continue the Public Hearing to the next meeting. Mr. Lee seconded the motion. Motion passed, 3-0-0.

<p><u>Case #Z19-22</u> Thomas Varney, P.E., Varney Engineering, Agent for Geraldine Gaeta and Jonathan Paine, owners</p>	<p>64 Barbara Drive, Map 71, Lot 21</p>	<p>Variance Rural Zone (RU)</p>
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A Special Exception is requested from **Article 300, section 327 A.1** of the Zoning Ordinance to permit the addition of a deck 6 feet wide and 38 feet long, onto an existing cabin, that will create a total encroachment of 28.5 feet into the 30-foot shorefront setback from Hill’s Pond.

Mr. Monziona read the case into the record. The Board reviewed the application for completeness.

Mr. Rich made a motion to accept the application as complete. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Mr. Rich made a motion to continue the Public Hearing to the next meeting. Mr. Lee seconded the motion. Motion passed, 3-0-0.

<p><u>Case #Z19-18</u> Doug Suprenant of Belknap Landscaping Company, Inc., Agent for the Regan Family Rev. Trust of 2015, Robert and Erica Regan, Trustees, Owners</p>	<p>45 Indian Shore Rd. Map 62, Lot 2</p>	<p>Variance Lakeshore Residential Zone (LR)</p>
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A *Variance* is requested to **Article 300, Section 327, A.1** of the Zoning Ordinance to permit the extension of an existing deck on the house that will encroach 10 feet into the 30 foot shorefront setback at its deepest point.

Mr. Monziona read the case into the record. The Board reviewed the application for completeness.

Mr. Rich made a motion to accept the application as complete. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Doug Suprenant, of Belknap Landscaping Company, Inc., Agent for the Regan Family Rev. Trust of 2015, Robert and Erica Regan, Trustees, Owners, presented the case. Mr. Suprenant stated they want to proceed with the Public Hearing with three members of the Board present. He stated the proposed plans for explanation of the deck are to make it more usable, noting it is allowable per the NH Department of Environmental Services and State statutes. Mr. Superenant stated they don’t feel it will change the character of the house but will provide more usable recreational areas. He presented maps and pictures of the current deck and surrounding areas. Mr. Suprenant stated after it was decided to expand the deck, they would put an extension around the back to the front porch, for a total expansion of about 550 square feet. He stated the currently existing bottom bricks would be replaced with permeable pavers which will help with runoff into the lake; he doesn’t see any trouble with any neighbors as it won’t affect any and it will increase the owners’ property value as well as allow them to use the area of the property. Mr. Suprenant noted the latest plan does not include the removal of a 17” Hemlock tree as NH DES requires that it to be left. He noted none of the work or changes would be visible from the road and it will use the same materials as currently existing on the porch.

Mr. Monziona asked if the second floor would be affected. Mr. Suprenant replied the plans are only for expanding the first floor deck; its currently about five feet out from the house and will be extended another 6 feet. He explained the NH DES application was rejected for the tree issue but other than that, and he expects the plans which will be resubmitted, will be accepted now that the tree will remain. Mr. Monziona clarified the impermeable pavers are already under the deck so already somewhat covered. Mr. Suprenant confirmed the current deck does not have a roof and the expansion will not be covered. Mr. Rich confirmed the existing deck is 5 feet out, the expansion will be another 6 feet out and then a 5 foot expansion will also wrap around the side to the front. Mr. Monziona asked the total encroachment on the 30 foot setback. Mr. Suprenant stated the total expansion is about 550 feet and approximately half of that will be in the setback, at the widest point it will be 5 to 6 feet into the setback. The current screened porch does currently encroach on the 30 foot setback, and is already a nonconforming structure. Mr. Rich asked about the new foundation and footings, and asked what is underneath the current porch and what is under the existing deck as far as doors or windows. Mr. Suprenant pointed out there is a double door under the porch but it's always been there. There will also two windows under the new proposed deck. Mr. Monznione asked Mr. Dever if there were any Department Head reviews presented. None were noted. Mr. Rich noted if this applicant is granted, it would be pending NH DES approval as well.

Mr. Monziona opened the Public Hearing to comment from abutters at 6:42pm.

Ann Smethurst, 51 Indian Shore Road, stated they are new owners to this property so were not initially notified and are not noted on the abutters list as presented. Ms. Smethurst asked how many feet the setback has to be from the side property line. Mr. Monziona stated all structures have to comply with a 10 foot setback from boundary lines. Mr. Dever explained the plans show a 20 foot setback on the side boundary lines and the plans show the deck to be more than 5 feet from there.

The Public Hearing was closed at 6:50pm.

Discussion

Mr. Lee stated the variance ***will not*** be contrary to the public interest. The Board concurred. Mr. Monziona stated its is an improvement to the property and doesn't violate any setback requirements, there are also some environmental improvements as well.

Mr. Rich stated the request ***is*** in harmony with the spirit of the ordinance and the intent of the Master Plan to maintain the health, safety and character of the direct district within which it is proposed. Mr. Rich stated this project won't affect any abutting neighbors and it will probably make it more safe. He noted there will also be more previous pavement and it is a safety issue as well as continue to keep with the character of homes in the area. The Board concurred.

Mr. Monziona stated that by granting the variance, substantial justice *will be* done, and the reason for the setbacks will not be undermined with granting this variance. There are improvements being made environmentally and the total amount of square footage which will be encroaching on the shoreline setback, is minimal.

Mr. Lee stated the values of surrounding properties *will not* be diminished and the presentation shows that the management of silt and runoff will not affect the properties. Mr. Monziona stated this improvement will enhance the value of the property and potentially that of surrounding properties.

Mr. Rich stated that for the purposes of this subparagraph, “*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 ordinance provision and the specific application of that provision to the property;*
- ii. *The proposed use is a reasonable one.*

Mr. Rich stated the ordinance provision is being adjudicated here because they are asking for some special conditions due to the conditions of the property. Mr. Rich stated the proposed use *is* reasonable and the applicant has taken steps to take some of the paving out and keeping the Hemlock tree, overall trying to make improvement and work within the confines of the NH DES and variance requirements. The Board concurred.

Mr. Rich made a motion to approve the request for variance to Article 300, Section 327, A.1 for Case#19-18 with the condition that the applicant obtain the necessary NH DES permits. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Mr. Monziona closed Case #19-18 at 6:57pm.

<u>Case #Z19-20</u> Ryan Heath, owner	432 Old Wolfeboro Road, Map 12, Lot 34	Equitable Waiver of Dimension Rural (RU) Zone
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An Equitable Waiver of Dimension to **Article 300, Section 327, A.3.**, is requested for the corner of an existing garage that encroaches 3.6 feet into the side property line setback.

Mr. Monziona read the case into the record. The Board reviewed the application for completeness.

Mr. Rich made a motion to accept the application as complete. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Ryan Heath, owner, stated he purchased the property a few months ago with the intention of constructing a house; there was an existing gambrel garage as well as a foundation

slab, septic and well with fires taking out the trailer. He stated as they moved forward with plans for construction, they found an old septic design within the Town files but when the recent survey was conducted it was found that the back corner of the garage was canted towards the property line. Mr. Heath explained there is a jog in the property line and that's where 3.6 feet of the garage encroaches on the boundary line, with a total of 21 square feet encroaching. He stated research in the Town files shows the building permit was pulled in 1983, indicating its been well over 10 years. There is nothing on record or in the files regarding notices, violations or anything per RSA; he stated he has spoken with abutters to make sure they are aware and the immediate abutter to the garage are both excited about the reconstruction process and improvements of the property. Mr. Rich clarified this is tidying up the deed and getting things in order before building a house. Mr. Rich asked if the plans are to build soon. Mr. Heath stated the house construction has been started.

Mr. Monziona stated that for the record, there is no other members of the public present however opened and closed the Public Hearing for comment.

Mr. Monziona suggested deliberating and going through all the criteria as set forth in section 4 as he believes the applicant could meet all the criteria however he does not need to per (b): *the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affect.* Mr. Rich concurred and the Board agreed to discuss 4.b and 4.d.

Discussion

Mr. Rich stated that: *in lieu of the findings required by the Board under subparagraph a) and b): the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affect.* Mr. Rich stated when this was built, it was in 1980 period, which was almost 40 years and the applicant has demonstrated that the violation, if any existed at the time, there has been no enforcement action and the Board is not aware of any written notice of violation. He stated as no one is here from the public, no one is affected. The Board concurred.

Mr. Monziona stated: *the physical violation does not constitute a private or public nuisance, no diminish the value of other property in the area, no interview with or adversely affect any present or permissible future uses of any such property.* Mr. Monziona stated there is no evidence that the property values would be diminished but the applicant has demonstrated that the people are happy with what is going and there does not appear to be any adverse affects. Mr. Rich stated the applicant will be building a house and improving the property and neighborhood. The Board concurred.

Mr. Lee state: *that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to corrected.* The Board concurred.

Mr. Lee made a motion to approve the application for an Equitable Waiver of Dimension to Article 300, Section 327, A.3., for Case #Z19-20. Mr. Rich seconded the motion. Motion passed, 3-0-0.

Case #Z17-17 Anthony Sciola, owner	Eastside Drive, Rt. 28A, Map 12, Lot 34	Extension of Special Exception Lakeshore Residential (LR) Zone
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A request has been submitted for an extension of a Special Exception (Case#Z17-17), granted September 7, 2017.

Mr. Dever confirmed the applicant is not present but it is just a paper request for a two-year extension.

Mr. Monziona read the case into the record. The Board reviewed the application for completeness.

Mr. Monziona confirmed no work has commenced and there is no one present in opposition. Mr. Rich asked if there are any consequences they should be aware of if the extension is granted. Mr. Dever replied that when the special exception was granted, there was no expiration but the State statute changed and now an extension is necessary.

Mr. Rich made a motion to accept the request for Case #Z17-17. Mr. Lee seconded the motion. Motion passed, 3-0-0.

Mr. Monziona stated that as the law was changed, they should now grant the extension, particularly where no work has been started. Mr. Dever stated a modular home company contacted him a few days ago with questions regarding requirements so believes the applicant may be going this route; this modular home process would have minimal impact on the neighborhood.

Mr. Rich made a motion to approve the request for an extension for two years for Case #Z17-17. Mr. Lee seconded the motion. Motion passed, 3-0-0.

OTHER BUSINESS

Mr. Dever stated he has an update for the zoning amendments but will be forwarding these via email for review by the Board.

Mr. Rich asked if the Board members should be looking out for potential alternates to the Board. The Board concurred that more members would be beneficial. It was suggested to submit a letter to the editor for *The Baysider*.

APPROVAL OF MINUTES

Meeting of September 5, 2019 – As a quorum of the meeting wasn't present, review and approval was postponed for the next meeting.

ADJOURN

Mr. Lee made a motion to adjourn. Mr. Rich seconded the motion. Motion passed, 3-0-0.

The meeting was adjourned at 7:25pm

Respectfully Submitted,

Jennifer Riel, Recording Secretary

Minutes approved as amended: November 7, 2019