



**ZONING BOARD OF ADJUSTMENT**  
**MINUTES MEETING OF APRIL 21, 2014**  
APPROVED MEETING OF MAY 19, 2014

**PRESENT:** S. Bogert, **Chair**; S. Perley, **Vice Chair/Secretary**; D. Greski; M. Foote; K. Geraci, Alternate

**ABSENT:** O. Gibbs; R. Smith, Alternate; S. Saunders, Planning Director

**S. Bogert called the April 21, 2014 meeting of the Laconia Zoning Board of Adjustment to order at 7 pm.**

**K. Geraci was seated as a full board member for the evening's hearings in place of O. Gibbs.**

**MINUTES:** The minutes from the March 17, 2014 meeting were discussed. The motion to approve the minutes was made by D. Greski and seconded by K. Geraci with all voting in favor of approval, 5-0.

S. Bogert let the public know that the 2 hearings this evening would be heard together but that the votes would be done separately. He read the applications into the minutes.

<b>Application # 2014-0003</b>	<b>MSL # 300-178-12-2</b>	<b>RS Zone</b>
<b>Scott Everett Living Trust</b>	<b>246-250 Paugus Park, # 2</b>	<b>Variance</b>

The applicant is seeking a Variance from 235-19 (F) (2) (b) in order to remove an existing deck and construct a detached deck which would intrude into the 50-foot setback. Approximately 290 SF will be within the setback area.

<b>Application # 2014-0004</b>	<b>MSL # 300-178-12-2</b>	<b>RS Zone</b>
<b>Scott Everett Living Trust</b>	<b>246-250 Paugus Park, # 2</b>	<b>Variance</b>

The applicant is requesting a variance from 235-19 (F) (2) (d) in order to remove an existing deck and construct a detached deck, leaving approximately 33% impervious coverage while making the property less non-conforming.

**Applicant:** R. Dyer appeared for the application along with R. Saunders and K. Lacey. He said there are 2 applications before the board this evening. One is for setbacks, with a slight encroachment into the 50' setback, and the other is for the green space.

R. Dyer said his client is one of 2 owners on this property. He said this is a very nice property and that photos were submitted with the applications. The owner has ties to Laconia, as his mother lives here. He also owns Big Island, which is a 2 acre island in Paugus Bay. He wants to develop Big Island as a camp site for underprivileged children at some point, handling about 30 at a time, with different camping cycles. That would be non-profit. S. Saunders is aware of this project and it is in the works.



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Nobis Engineering is handling both of these project. They are an employee owned firm and 5% of their profits are given to charitable organizations.

D. Greski said this is all very good but irrelevant to this application so, in the interest of time, can we just move along.

R. Dyer apologized and, said he thought the information was interesting and gave a good background on the applicant and his intentions.

He introduced Katherine Lacey, who is an intern in their office, and a third year law student. She hopes to become a member of the firm after graduating.

**Robert Saunders**, of Nobis Engineering, said that Dave Dolan did a survey last fall. There was 36% lot coverage at that time. Most of the lots located here are non-conforming and not in their natural state. This property is more modern than most there, well kept up, less dense lot coverage than most here.

The existing paved walk would become a pervious paver walkway. The patio basement level is over the 50' setback, and the proposed deck would be less than that. This needs foundation work to meet DES requirements, so the existing patio would have to be disturbed so they are pulling it back and changing it to porous as well. The net impervious area will go down from about 37 to 34%.

He showed pictures of Unit # 2, showing the basement patio, which currently goes to the face of the unit, with the first floor deck, which is about 100 sq ft, There is a 2<sup>nd</sup> story deck, which is very small.

D. Greski asked if the blue line is the 50' setback and was told yes. R. Saunders said that the top deck is currently cut off at an angle to not go over that now.

They plan to build the deck replacing the lower one. The higher one is to remain. About 290 sq ft will be going over the 50' line. About half of that will be new deck, and the remainder is to be replaced with porous pavers.

R. Saunders said the deck is in excess of 7 ft off the ground. D. Greski said the deck is 42' long, and all 42' is encroaching into the setback. R. Saunders said they are removing the current patio and replacing it with porous pavers.

He showed photos and architecture. This will be a cantilevered deck, with steel posts which are setback several feet. There will be a real foundation under. This will have a steel sub structure with wooden framing on top, and glass walls and the posts. 2 windows will be changed to doors, and the 2<sup>nd</sup> story deck is to remain the same. He showed the limit on the photos.



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D. Greski said this is a 4 ft foundation, and asked if they will build on top of this. He asked if there will be a frost wall and was told it will have a sono tube type pier with a cement base. The deck won't be attached to the house, as the State won't permit it to be attached. The State considers this a temporary impact, not permanent.

D. Greski asked if the DES paperwork showed the foundation design and was told no, but they did discuss it with them. All of the issues have been identified with them.

The DES says this cannot be extended beyond the 50', if attached to the structure, but a detached structure can be built. They consider this conforming.

D. Greski said this must be an engineering nightmare to have to support the weight. There are steel girders, and steel posts, with concrete up to the house. There will be 6 posts, but he is unsure of the 6 piers.

S. Bogert said this sounds very well built and asked how far out is the cantilever; he was told it is about 4 ft.

S. Perley clarified that this is a condo association with just 2 units. R. Saunders said yes and that the DES material and the condo approval was in the file received by the board.

R. Dyer went through the criteria.

**(1) The variance will not be contrary to the public interest and** will not alter the essential character of the neighborhood. When you drive down Paugus Park Road you can see that the entire neighborhood is built up. Most have about 50' of frontage and many of the lots exceed the 70% lot coverage. The entire neighborhood is significantly built out, and there are many decks and patios that go right to the waterfront so this proposal won't have any negative impact to the public.

**(2) The spirit of the ordinance is observed.** The shoreland ordinance is written to protect water quality, and small change to the setback area will be offset by the benefits of the new porous pavers and the reduction to the run off. There are more benefits than detriments. The deck is more than 7' in height so there is no impact to the green space. The net result is a property improved environmentally and with better lot coverage.

**(3) Substantial justice is done** as the current use is consistent with uses in the area. These are primarily recreational, second homes, with a few residences being year round. They submitted the DES application and got approval as they met those standards. There are no threats to the public health, safety or welfare of the general public and there are no measurable effects to the neighborhood or to the City. There is a benefit due to the reduced run off because of the new porous pavers being substituted and enhanced filtering.



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D. Greski asked if this will impact the view of the next door neighbor; he asked if the deck protrudes further out. R. Dyer said he was there today and thinks Mr. Greski's question is based on the perspective of the photo that was submitted. He said he looked at that today to verify and doesn't feel there is any impact.

S. Bogert showed the area on the plans. He said he agrees that the deck won't have an effect. D. Greski asked for it to specifically be placed into the minutes that this proposal won't impact the view of the neighboring houses on either side.

**(4) The value of surrounding properties are not diminished;** The proposal is not out of keeping with the neighborhood. This is already an attractive property so it should have a positive impact to the neighborhood. A letter was submitted from Roche Realty which stated there is no reduction in property values.

**(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** R. Dyer said there is no benefit to neighborhood or the community by denying this. There would be no benefit if the ordinance is rigidly enforced. This property is unique in a good sense. In this case the property has green space, and this proposal will make less lot coverage. Many decks here are much closer to the lake than this will be.

(A) For 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; AND
- ii. **The proposed use is a reasonable use.** The request is reasonable and allows a reasonable use. There is a net positive impact, and the property is beautifully maintained. The addition of the decks won't interfere with any views.

D. Greski asked for clarification on the property's uniqueness. R. Dyer said this is the only property on Paugus Park Road that has appreciable green space and comes anywhere near what the requirement is. Most have more than 50% coverage.

D. Greski asked how that is a hardship and R. Dyer said it is inequitable to impose a restriction to not allow a reasonable increase in the deck when the other properties are fully built out and way in excess of the current standards. The other issue is relevant to hardship as there are safety concerns here now. The construction of the new deck will enhance the points of egress for the residents, as



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there will be two new points that aren't there now in case of an emergency. D. Greski asked why that is a hardship when they could just put in another door.

R. Dyer said the hardship is the reverse of what you normally see, as the property has substantial frontage on the lake and road, and far more green space than others so it is unique and it would be a hardship not to permit this. He said it is not possible to put another door onto that story, as there is no way to get down. The deck will solve that problem, allowing people to access the deck here and exit the premises.

**Public:** No one spoke for or against the proposal.

**Board:** There were no further questions. S. Bogert asked the applicant if they had any further comments.

**Applicant:** R. Saunders said that the parcel does sit further back due to the cove. Its uniqueness is the physical geography caused by the cove. The lot is deeper in this area. The neighbors currently encroach more but are grandfathered.

S. Bogert clarified that, due to the layout, with the shoreline requirement and the setback from the road, there is not much room to build anywhere without impacting the shore line. R. Saunders said both neighboring residences were built before, so are grandfathered. This is a newer property.

R. Dyer also clarified that if the owner wanted to make another egress, it would still require a variance to add the stairs.

S. Bogert said he feels, by using glass, this reduces the visual effect compared to the neighbors who have regular decking. He feels it disappears. He added that the neighbor's house sits differently on their lot. He said this won't effect the other condo unit here and he doesn't feel there will be a visual effect at all.

**S. Bogert closed the hearing to the public at 7:45 and brought the discussion back to the board.**

**Board:** D. Greski said he doesn't feel his question was answered in the print we received but that R. Saunders clarified it and stated the hardship.

The cove on the other side pushes the setback further back into the property and creates the hardship on the property. D. Greski said he feels this is the hardship for this piece of land.

**Motion:** S. Perley moved to approve application # 2014-0003 which would allow the intrusion into the 50-foot setback from the shoreline. Approximately 290 square feet will be located within the setback area.



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The proposal won't be contrary to public interest as this impacts about 290 sq ft. The proposal is for a 7' x 12' detached, raised deck. It doesn't violate the basic zoning object. There is no substantial change being proposed. The proposal doesn't threaten the public safety, health, or welfare with the small impact of 290 sq feet.

Substantial justice is done with the proposal. The use is consistent with others here. Everyone who lives on the lake wants a deck and there is no direct effect on the adjacent properties.

The hardship exists due to the special conditions of the property due to the configuration of the lot and the cove which pushed construction further towards the house.

This proposal doesn't alter the essential character of the neighborhood and the use is allowed in the neighborhood.

**D. Greski made the second and all voted in favor of approval, 5-0.**

**Application # 2014-0004**  
**Scott Everett Living Trust**

**MSL # 300-178-12-2**  
**246-250 Paugus Park, # 2**

**RS Zone**  
**Variance**

The applicant is requesting a variance from 235-19 (F) (2) (d) in order to remove an existing deck and construct a detached deck, leaving approximately 33% impervious coverage while making the property less non-conforming.

**Motion:** D. Greski moved to approve Application # 2014-0004, which allows approximately 33% impervious coverage on the property.

He asked if we can use the wording submitted by the applicant on their write up to make the motion. He feels that this is appropriate in this case to use the criteria for items 1 – 5, as the applicant will be decreasing the impervious area, and using porous pavers to increase pervious in the area of the stone walkway and under the deck. He said he feels that the criteria were answered correctly by the applicant and it is appropriate to use this for the motion.

1. **The variance will not be contrary to the public interest.**

“Green Space” is defined in Chapter 235-13 as “Land area with landscaped or natural vegetation, including those vegetated areas located under upper story decks, porches and overheads that are a minimum of 7 feet from the ground at the lowest elevation.” The proposed deck facility will not adversely affect public health or safety, nor will it have any measurable impact upon neighboring properties. In fact, it will enhance safety by permitting additional, quick egress from the waterfront portion of the unit in case of fire or other emergency. In addition, the use of pervious pavers reduces the amount of runoff into the lake, and instead diverts the runoff into the ground for



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natural filtration. The deck is consistent with other properties in the neighborhood and will not alter the character of the neighborhood; **AND**

2. **The spirit of the ordinance is observed.**

The underlying purpose of the ordinance is to enhance air, water and safety by mandating minimum open space requirements. The slight addition to the existing deck coverage is minimal. 100 square feet of the existing deck will be replaced with the new deck, making a total addition of approximately 470 square feet; however, because the deck is at least seven feet off of the ground, this additional square footage will not impact the green space calculation. Allowing the variance improves the sustainability of the waterfront. The deck is designed to permit rain water to flow to the area immediately below the deck. The Applicant is removing the impervious surface material underneath the deck facility so that any water flow will filter into the ground and not run off toward the lake. This removal, together with the fact that the proposed deck will be more than 7 feet higher than the existing terrain, should make the entire property more conforming. Making the property more compliant is an underlying objective of the ordinance; **AND**

3. **Substantial justice is done.**

The proposal is consistent with present use and lakefront use. Neighboring properties have similar decks, and in most neighboring properties lot coverage is estimated to be much higher than the Applicant's property. This is a reasonable request and thus allows a reasonable use of the property, with no harm to the public. In fact, from an environmental standpoint, the proposal has a net positive impact in the sense that overall lot coverage is more conforming and there is less likelihood of surface runoff; **AND**

4. **The values of surrounding properties are not diminished.**

There are only seasonal, recreational cottages, camps and a few full time residences in the Paugus Park area. One need only view the property to determine that the deck would have no adverse effect upon surrounding property values. Overall, the property has been maintained such that it adds to surrounding property values; this variance will permit the continued maintenance. The Applicant is submitting evidence (appended to 2014-0003) that the values of surrounding properties shall not be diminished; **AND**

**(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: 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;**



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- i. Owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property.

On a balancing test, the benefit to the community by strict enforcement has no measurable impact, while the detriment to the Applicant is specific. The Applicant will present evidence that the proposal actually benefits the environment by creating additional pervious surfaces and reducing potential runoff to the lake; AND

- ii. **The proposed use is a reasonable use;** The proposed use is a reasonable and permitted use; **OR**

**(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. N/A**

**The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.**

S. Perley seconded with all voting in favor of approval, 5-0.

**It was noted that the shoreland permit received with the applications is valid for both.**

**OTHER BUSINESS: ZTF: Signs:** S. Perley let the board know this would be going before the Planning Board for a public hearing at their next meeting on May 6. She said they had suggested one change. They wanted 75% not 50% of the total sign area. If the Planning Board approves this, then it goes to City Council. If they approve this, it becomes law.

**ADJOURNMENT:** The motion to adjourn was made by S. Perley, with the second by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 7:55 pm.