



**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**June 20, 2016, 7 PM**

**Training Room of Fire Station**

**I. Call to Order**

Chair Bogert called the meeting to order at 7 pm.

**II. Roll Call**

K. Graham called the roll with the following members present: Roland Maheu, Suzanne Perley, Vice Chair/Secretary; Orry Gibbs, Mike Foote and Zoning Chair, Steve Bogert

Absent: Gail Ober

Staff: Chair Bogert noted that Interim Planning Director Brandee Loughlin was present.

Recording this meeting: Kalena Graham

Chair Bogert stated there were five (5) members present and a quorum was established.

**III. Minutes**

The minutes from the ZBA meeting of April 18 were distributed April 22 and reviewed. There were no revisions.

*O. Gibbs made the motion to accept the minutes as written, seconded by R. Maheu. All voted in favor, 5-0*

**IV. Presentations**

**V. Extensions**

**VI. Continued Public Hearings**

**VII. Public Hearings**

1. Application #ZO2016-0009, Variance  
3 Chester Court, MBL 413-42-56, RG Zone  
Owner: Mary Fitz-Gerald

*Variance from 235:35(A), (front setbacks) in order to erect stairs for egress from second floor.*

Chair Bogert opened the public hearing at 7:05 pm.

Applicant: Mary Fitz-Gerald, property owner and Dennis Rowley, the builder were present. M. Fitz-Gerald explained the proposal. She is looking to put a fire escape on the front of the house for egress from the



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second floor. She is nervous because of the era of the house. D. Rowley explained the details. The fire escape will be on the front corner of the house and will not exceed past the porch or past the front of the house. Currently there is no egress from the second floor. The existing window will be replaced with a swing-out door that is over the porch and about eight and a half feet high. The stairs will go up next to porch but be separate from the porch. There will be an entrance way with a four by five foot landing and built with Trex for stability and footing. There will be no deck, just a landing. The bedrooms are on the second floor. Interim Director Loughlin told the board that the porch is currently in the front setback. Since the lot is on a corner, there are two frontages. The rear of the house is not an option as there is a small window and the inside stairs are there. Currently the applicant has a building permit for this and is just waiting on a decision from the board.

There were no abutters or public to speak for or against the application.

Chair Bogert closed the public hearing at 7:12 pm.

Board Discussion: No one from the board expressed any issue to the application.

*M. Foote made the motion to approve the application for variance of the front setback to allow for a fire escape. The variance will not be contrary to the public interest. The variance will allow for safe egress from the second floor in case of emergency. Public will not be affected by the fire escape. The spirit of the ordinance is observed. The extra feet into the setback will not affect the public right of way as it will be the same as the existing porch. Substantial justice is done. The variance will allow for safe egress from the second floor in case of emergency. The value of surrounding properties are not diminished. The variance will not affect surrounding property values, but will add safety. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The variance will not affect the public in any way. Addition of a fire escape will add to the safety of the residence. The unnecessary hardship is no egress from the second floor. 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. The fire escape is consistent with the current use of the building and fits into the character of the neighborhood. The proposed addition of a fire escape will not create a hazard to the health, safety or general welfare of the public. The fire escape is needed by the resident of the home for safe egress from the second floor. The proposed use is a reasonable use. The proposed use is reasonable due to the safety of the owner. Without a fire escape it would be difficult to exit the second story of the house and may cause harm. Seconded by R. Maheu. **The motion passed unanimously, 5-0.***

2. Application # 2016-0010: Variance  
156 Birch Haven, MBL # 180-346-3, RR1 Zone  
Owner: Cheryl Doyle



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*Variance from 235:19(F) and 235:35(B), (shoreland & setbacks) in order to erect a deck. The applicant will be taking two existing side decks away and erect one on the water side of the building.*

Chair Bogert opened the public hearing at 7:15 pm.

Applicant: Keith, Cheryl and John Petrie were present. The property was inherited from their parents and they would like to upgrade the structure and add a deck along the water front. They will be removing two existing landings and stairs on each side of the house. The new deck will have stairs that go up the side of the house but not touching. New siding and windows have been started. The deck will not be enclosed. The lot is very small and there is not a lot of buildable area. Interim Director Loughlin noted that a small strip of land is the only place to put a structure. The house sits at an angle on the lot. The only setback not violated is the 50 ft shoreland. French doors will go out to the proposed deck.

There were no abutters or public to speak for or against the application.

Chair Bogert closed the public hearing at 7:22 pm.

Board Discussion: M. Foote noted that when dealing with the older houses built on such small lots, they are already out of compliance. Chair Bogert noted the hardship involved are seen with the size of the lot. The property values will not be decreased but likely increased or maintained. The public interest would be served as the neighbors would most likely be happy. There was no further discussion.

*S. Perley made the motion to approve the application for the deck. The variance will not be contrary to the public interest. The variance will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. The structure will not unduly or to a marked degree violate the basic zoning objectives of the zoning ordinance. The spirit of the ordinance is observed. The proposed deck will not harm the public or private rights of abutter or others and still not shut the light and air from the neighboring properties. Substantial justice is done. The benefit to the applicant is far outweighed by any negative impact to the general public. The value of surrounding properties are not diminished. The proposed deck will not only increase the value of the subject parcel, but might increase the value of surrounding properties also. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The existing zoning restriction interferes with reasonable use of the property. The unnecessary hardship is the size of the lots in the area being small. 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. The proposed deck will not injure the public or private rights of others. li. The proposed use is a reasonable use. The proposed use is reasonable due to it overlooks the lake and abutting properties each have similar decks. The proposed deck will not alter the essential character of the neighborhood. Not granting a variance is a restriction of the use to the property. Due to the current zoning restriction, and the way the property exists, there is no*



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*reasonable use that could be made that would be permitted under the ordinance. Seconded by O. Gibbs. **The motion passed unanimously, 5-0.***

3. Application# ZO2016-0011, Variance

278 Paugus Park Rd, MBL# 306-178-003

Owner: Lawrence Rosenfield

Variance from 235:19.F(b), (shoreland setbacks) in order to replace structure.

Applicant: Atty Pat Wood, Lawrence and Diane Rosenfeild, property owners, were present. Atty. Wood spoke. The request is for permission to tear down the existing structure and construct a new more conforming structure. The lot is a 6700 sq ft triangle shape lot on the southern end of Paugus Park Rd. The Railroad is on the westerly side and lake on the southeast side and Gattineri Trust on the northerly side. The existing house encroaches on the north setback by 3 or 4 ft. The deck is 26 ft from the shore the house is about 14 ft away from the front of the deck. The existing shed and will stay in the same location but will be lifted to meet grade and be more secure. Atty Wood went over the papers in the packet. The proposed house is larger than the existing structure, but will be moved to not encroach into the setback, and moved further from the lake and reduced the size of the deck. The existing structure is 830 sq ft and the proposed will be 1234 sq ft. The most important part is the lot coverage will be reduced to 24.13% from 42.29%. Porous pavers will be put in where there is pavement and a drip trench around the building will be put in, to collect rain water. Originally, the lot was owned by the Breakwater Condominium as the "beach lot" with an easement to cross the railroad. The railroad terminated the crossing and the rights to the property, from the development were terminated. An application has been submitted to DES and they have received approval. Many of the lots in the area are in the same predicament and many have changed and upgraded. S. Perley asked about access to the lot and was told that at the end of the road, there is an easement over two lots to the subject property. The property owner drives straight in and needs to back out. The proposed house will be two stories. There is no street frontage on the lot. Paugus Park Road has public sewer. Atty Wood feels that the proposal meets the standard criteria. The lot is two thirds the size of the requirements, it does not have 80 ft of frontage. The ordinance says that non-conforming structures may be replaced with a new structure that reduces the amount of the dimensional requirements. However, new primary structures in the overlay of the shoreland have to be at least 50 ft away, but the non-conforming lot is exempt and addressed under the non-conforming lot part of the ordinance. The 50 ft setback would take up almost the entire lot. The public interest allows for flexibility where there is a non-conforming lot, the setback encroachment will be eliminated and the size of the proposed deck will be reduced and moved further form the shore. By allowing the structure to be built, no views would be interfered with and would be brought up to the current life safety codes. There would be no negative impact to public interest because it would preserve the shoreland and provide greater protection with the upgrades to the site. The values of this and neighboring properties would be changed for the better. The existing structure is a three bedroom.



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Abutters: Dan Gattineri, the direct abutter, spoke. He said he had applied to the zoning board to move his shed that was currently on the railroad right of way to the property line and the Rosenfields were against the placement so the application was withdrawn. D. Gattineri stated that Mr. Rosenfield felt it was too close to their house. D. Gattineri had been out of the country the past few weeks and just received the notice for the meeting. He would like to work with the applicant and come up with an agreement and asked the Board to continue the hearing for legal issues to be figured out. He hasn't seen the drawings of the house and plans for the site. There is an easement at the end of Paugus Park Rd that goes through a few properties because the road stops prior to the last three properties. He would like to work with the neighbor before a decision is made.

No one else spoke for or against the application.

Atty. Wood responded stating that the shed proposal was right next to his client's house on the property line. There has been indication that his client was not opposed to the shed, just the location and would have liked it moved back about 10 ft. Atty. Wood did speak with the Atty Nadeau regarding the issue and is not relevant to the application at hand. Chair Bogert stated that any structure proposed in a setback would need to go before the Zoning Board whether an agreement was made or not. R. Maheu asked if Gattineri was the only person that abuts the subject parcel and was told yes. Chair Bogert said the reason for the application is the shoreland setback. The new structure will be slightly less non-conforming. The hardship is the fact that there is no other place to put the house.

Chair Bogert closed the public hearing at 7:59 pm.

Board Discussion: O. Gibbs feels the request is reasonable. They are improving the house, impervious coverage by reducing it with pervious pavers, and moving the new structure out of the setbacks as best as possible. The state permit has already been received. R. Maheu is uncomfortable with the idea that the only person who abuts the property just found out about the application and could be affected by the decision, has an issue. Chair Bogert stated that if everything was done to state regulations, the fact that the abutter didn't see the notice until today has no relevance. The RSA states 5 days prior to the meeting. O. Gibbs stated that the proposal will improve the surrounding area with new building and drainage being moved out of the setback and doesn't see the impact. Chair Bogert stated that the abutter's applicant has no relevance with the current application.

*O. Gibbs made the motion to approve the application to remove the existing nonconforming structure and construct a new structure in the SPOD. The variance will not be contrary to the public interest as the zoning ordinance, Article X, recognizes that nonconforming lots require different treatment. The variance would permit the design and location of a safe and reasonably configured residence. The location and size of the proposed house will not interfere with views by neighboring property and will replace an aging existing*



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*house with a new structure that meets current codes, is more energy efficient, and is considerably more functional. The variance would allow reasonable use of a lot that is substantially smaller than currently allowed in a manner that recognizes the need to reduce the impact on the lake front because of the unusual configuration of the lot, and by reducing the amount of impervious surface to below the minimum requirement of city requirements. Allowing replacement of the structure will eliminate the setback encroachment to the north. Reducing the size of the deck and moving it farther away from Paugus Bay will reduce the shoreland encroachment. Permitting the replacement of the existing structure would be consistent with what is occurring within this neighborhood over the past few years. A new residential structure that is built in accordance with current life safety, electrical, plumbing, and energy efficiency standards and requirements will better secure and promote health and the general welfare. The requested variance would not have a negative impact on the public interest in preserving and protecting the shorelands adjacent to Paugus Bay. The Spirit of the Ordinance is observed. The proposed variance does not conflict with the purposes and intents of the District and does not violate the basic objectives of the Laconia Zoning Ordinance. There would be no alteration of the basic and essential character of the neighborhood by the granting of the variance. The size of the proposed structure is well within the average sizes of both existing and new structures on Paugus Park Road. Substantial Justice is done. Considering the unique qualities of this lot, the purposes and intents of the Zoning Ordinance to maintain safe and health conditions and to prevent and control water pollution and to reduce or eliminate flooding and accelerated erosion, will be more effectively met by replacing the current residence with a modern residential structure that meets current codes for life safety, energy efficiency, and plumbing as well as capturing and controlling roof and surface drainage. The proposed replacement of this dated residential structure is in keeping with the status of most of the properties on Paugus Park Road and is beneficial to the protection of the economic benefits that the scenic qualities of the shoreland present. Denying the variance for the proposed deck in light of the unusual shorefront configuration would not be a reasonable trade-off for the substantial benefit the community and the neighborhood will receive by the new residential structure. The values of surrounding properties will not be diminished. The upgrading of the residential structure on the property will be in keeping with the overall appearance of the neighborhood and, as a new and much more valuable structure, will most likely enhance the values of the surrounding properties. The increase in value will help to increase the values of surrounding properties rather than diminish those values. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The unnecessary hardship that distinguish it from other properties in the area is the nonconforming situation. Applying the requirements of the ordinance would make it impossible for the owner to replace this aging structure, something that is specifically permitted under Article X of the Zoning Ordinance. All of the primary structure will be within the side setback requirements and no closer to Paugus Bay than the existing residential structure. The applicant is proposing to reduce the pervious surface from 42.29% to 24.13% of the lot. The size of the proposed deck is not extreme and is in keeping with similar structures in the neighborhood. No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property: The Zoning Ordinance was adopted to promote good civic design and the appropriate use of land and buildings. The ordinance*



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*recognizes the need to treat nonconforming lots in a manner different from conforming lots. The unusual configuration of the property is such that the existing residential structure could not be built upon the lot let alone the proposed structure. The proposal is designed to do exactly what the ordinance promotes to use the property in a safe and appropriate manner and to do so in a way that improves overall safety and does not disturb the neighborhood or the neighbors. The proposed use is a reasonable use: The replacement of the existing decades old residential structure with a modern residential structure is reasonable. Reducing the size of the deck and moving it farther away from Paugus Bay is reasonable and appropriate. The proposed location of the house and deck will not have negative impact on the lot or the neighborhood. The proposed location is reasonable and safe. Seconded by S. Perley. **The motion passed unanimously, 5-0.***

**VIII. Other Business**

Interim Director Loughlin told the Board that the Zoning technician position closed on the 10th and interviews should be happening within the next few weeks.

**IX. Adjournment**

*S. Perley made the motion to adjourn, seconded by R. Maheu. **All voted in favor, 5-0.***

The meeting adjourned at 8:20 pm.

Respectfully,  
K. Graham`  
Recording Secretary