



ZONING BOARD OF ADJUSTMENT  
Meeting Minutes  
September 19, 2016,

Call to order: Chairman Bogert called the meeting to order at 7:00 PM.

Roll Call: Wendy Patterson called the roll with the following members present; Gail Ober, Roland Maheu, Steve Bogert, and Michael Foote.

Absent; Orry Gibbs and Suzanne Perley.

Chairman Bogert seated Gail Ober as a voting member in the absence of Orry Gibbs and Suzanne Perley. He stated that there is a quorum with 4 voting members.

Chairman Bogert asked the applicants' representative, Pat Wood, if they would like to continue the hearing with a four member board. Pat Wood stated that his client would like to proceed.

Minutes: **MOTION;** Roland Maheu moved to accept the minutes of the meeting on July 18, 2016, as written, seconded by Michael Foote. Motion carried in favor 3-0. Gail Ober abstained from the vote.

Extensions: None

Continued Public Hearings: None

Public Hearing;

Application #2016-0015 98 Paugus Park Rd. Owner; Raymond M. England 2001 Trust, MBL 287-178-2, RS Zone. Applicant is requesting a Variance from 235-19 F (2) (b) in order to construct a deck that will encroach in to the required setbacks.

Attorney Patrick Wood was present and representing Donna and Ray England. Donna England was present.

Attorney Wood presented the Board with photographs of the property, in addition to the exhibits that were provided with the application, in order to familiarize the Board with the site. He explained that at one time there were three structures on the property, the house, a garage and a shed. He further explained that the previous structures encroached

on sideline setbacks as well as the setback from Paugus Bay, with the primary structure only being 48' from the shoreline and the deck being 36' from the shoreline. He asked that attention be paid to the brush pile and stumps at the front of the property and will touch on that later.

The new structure that is under construction is now located within all setbacks and is 52' from the water line (setback is 50'). The applicant is appealing for a Variance because a portion of the proposed deck will encroach 10' into the setback, not including an additional 20' encroachment for the stairs due to code. The overall deck will be decreased in size, from that of the original dimensions, by 75sf. The owners have tried and succeeded in overall reducing the encroachments that previously existed.

Permits have been issued from DES for the property, DES #2016-01402, for the construction, setbacks, and water mitigation of the property.

The lot is rectangular as seen from the plan and is 60' wide and 150' deep. The requirement for the RS Zone is 10,000 sf and requires 150' of shoreline frontage. The lot is undersized at 9,147.6 sf and 60.84' of water frontage. Prior house about 48 feet from shoreline 36; from shoreline. New house is 52' from shoreline and proposed deck will be about 38' (including stairs) at closest point from shoreline. Proposed deck will have a square footage of smaller than previous by 75 sf. State of NH does not concern itself with decks in this instance of building and our ordinance does not distinguish if decks are included in setback calculations. There will be an overall reduction of 18% in the shorefront setbacks. The impervious surface of the lot will be 32% about 180 sf over the allowable green space. Under the deck will be open but our ordinance does not distinguish if it Then considered green space or not dependent on the height of the deck.

Pat Wood: Does the variance request constitute something contrary to public interest? If the request is so markedly in conflict with the ordinance that it violates then the variance should not be granted. However if the request is not so inconsistent with the basic objective then it should be accepted.

Pat Wood: Proposed variance would allow deck on the house that would encroach slightly but not substantially. The concept is to provide a safe way for the people to get out of the second floor and to enjoy the views and is with keeping with the other properties in the neighborhood. Mr. Wood further stated that the property to the south also has a large deck and enclosed porch.

Pat Wood: The spirit of ordinance being observed in that other homes have been granted variances for this reason and it is keeping with the changes in the neighborhood.

Pat Wood: Substantial justice. Would the loss to the individual be outdone by the general public? The gain to the general public by this not being allowed will not be large. It will be of a larger gain to the England's. They have addressed erosion control with permeable pavers, being approved by the state of NH and the impact to the public will be minimal.

Pat Wood: Value of surrounding properties will not be diminished as the neighboring houses as well as many on the street have been reconstructing.

Pat Wood: Hardship. An unnecessary hardship is one that would distinguish it from other properties in the area. This lot is very similar but is distinguishable from others being developed in the area because it does not have the 150' of water frontage or site size. Is there something special about the property that would allow this variance to be a reasonable addition? The 50' setback is relatively new and was not there when the lot was originally subdivided. The England's have moved the house back from the water and reduced the lot coverage by putting the garage in to the house. Applying a rigid interpretation of the requirements of the Zoning Ordinance to prohibit this proposed deck would be contrary to the provisions dealing with non-conforming property under Article 10 of the Zoning Ordinance.

Pat Wood: The proposed deck would be no closer to the reference line than the original house was. Size of deck is not extreme and is in keeping with the neighborhood. Substantial effort has been made to adhere to the zoning ordinance and the Englands are here for the deck which is considered an accessory use. It is a smaller size impact on the shorefront setback and increases the overall green area. The clients have been able to move things around so that the house meets all of the setback requirements on a substantially smaller lot. The impact on the shorefront is less than before and enhances the overall neighborhood by having a house with a deck for enjoyment of views.

Steve Bogert asked if the stairways are encompassed in the deck itself. Pat Wood stated that the stairs may encroach further in to the setbacks.

Matthew Roy, builder, spoke on the dimensions of the property. The deck is proposed to be 40' wide from south side to 36' with a 4x4 landing to a set of stairs. Deck is proposed to extend out 12' and the stairs will extend an additional 20" beyond 12' that the deck will be.

Steve Bogert inquired if it will be a single level deck. Matthew Roy stated that it would be.

Michael Foote stated that he does not notice deck info in the plans (for the State) and approval. Pat Wood stated that the State does not deal with deck issues as they are considered local issues. Some towns do not require setbacks for decks, however Laconia does.

Gail Ober inquired why the stairway needs to extend beyond the area of the deck. Pat Wood stated that per code it is required that the steps be a certain size and due to that they will extend the 20" beyond. G. Ober also inquired what the issue was about the tree stumps that was mentioned in the beginning of the hearing.

Pat Wood stated that his clients had asked the neighbor if it would be ok to remove the tree stumps and brush and at first the neighbor said no problem and now it has become an issue.

Steve Bogert inquired if the stumps and brush have any bearing on the site of the house? Pat Wood answered that he thinks there is in that there has been discussion that the neighbor has stated that he now has water issues.

Steve Bogert stated that at this time the stumps have no bearing on the variance.

Steve Bogert opened up to the public for public hearing,

Mike Lacroix lives on south side of the England's and stated he has lived in the neighborhood for a while. Not sure about the problem with the stumps. Information given are not the plans used to build the house. The plans show a two story home. These plans are not accurate. The elevations for the deck are wrong and the staircase as shown on survey showed August 15<sup>th</sup>, they fall 26' from the edge of the water.

The architectural drawings that are part of the package are wrong they miss a story. Survey as provided does not show overhang. State needs to know drip edge, spoke with Craig Day who said if overhung over 10' then that was not calculated in. Survey given today does not show the overhangs so does not show impervious coverage. Topographical lines do not reflect what is on the ground. Topo's show a swale on their property, they have put fill against house which flows to his yard. The topos are not even close. Reiterated that the info in the packet is false. He further stated that the old deck was cheated in on a Saturday and was only shown on one side of the property. Old deck should not have even been there. DES shore land permits limits coverage to 29.8% of lot and they are asking to go to 32% and we should make sure the state will allow it. If you look at the dimensions they (the England's) fit within the setbacks but are too close to the water and his property is losing its view along the bay.

Mr. Lacroix continued that the granting of the variance would be contrary because it violates the objectives of the ordinance and shore land protection. So by eliminating part of the 50' setback it is against the public interest. Section 19 of shore land says intent is to preserve and protect attributes of the city. Under the ordinance it says it is for vegetation. Of the 9 items in the intent of the chapter they fail in 6 of them.

They (the England's) do not have a hardship and he stated he is betting that the England's will be granted a variance for this.

Spirit of the ordinance is being not being observed because they are decreasing the views and will change the essential character of the neighborhood and will set precedence for others to do the same.

Substantial injustice will not be done, reasoning was based on the cheated in deck, non-true size of house and info given to state being false. Lot is 60' wide and this house cast a shadow on both properties and the deck will increase this.

Values of surrounding properties will diminish, it is a very tall building and casts shadows, houseplants have had to be moved, drainage is an issue, no swales, deck will block view. Eliminates possibility for trees and growth. New decks and structures cannot be closer than 50' and they have created their own hardship, they could have built within the parameters. But did not. It is not need it is greed. Similarly situated properties did not get in to the setback. They (the Englands) have created their own hardship.

Herb Pflanz of 92 Paugus Park Rd., lives to the north of the Englands since 1992. He purchased the property as a small camp and had not been tied in to city services. In time they developed the property, got the necessary permits, and followed the rules. They knew lot coverage and sideline setbacks, built probably the largest house on the street, almost as like an A frame, has good sideline clearance on both sides. New house does cast a shadow, he cannot change that but he is concerned as a homeowner to think that they meet all of the requirements as such. Building inspector reviews the plans and how did it not come out that there would never be a deck on the property. Yes the lots are small, everything fits just right, and he tried not to shoehorn his house on to the property. It would have been nice if they (the Englands) could have shifted the house back toward the street a little. The location of the deck seems to be in line with the other decks on either side. How high would the deck be? From finished grade it will be 8'6" off of the ground. He has a partial basement and is concerned about water and the overhang, shows 1.5' but it looks like more. His concern is that the deck will be higher than what the builder is saying. If the deck is 10' high you would need 10" steps that now extends 16.5 if deck is 12' high then it would protrude out about 7' beyond deck so 19'. He does not want to see the stairs encroaching more. Lot coverage restriction is 30% and they are close. What kind of driveway adding to more water issues. They had problems in the past and will they have them still. He feels it needs to be reasonable and fair to everyone. House warrants a deck but should it be 10 or 12' extended out. Or should stairs be reconfigured all together.

Steve Bogert asked if the decks would line up with his and his neighbors with exception of the stairs. Herb Pflanz said yes, they are close.

Steve Bogert asked if there was anyone else that wanted to speak on this.

No one indicated they wished to speak on the issue.

Mr. Roy stated that it is a walk out basement, it has been extended up by being able to gain a walkout because of slopes, it will give a 13 riser system, will only protrude at the max 26" out to the setback. The decks are very close in the extension toward the lake.

Roland Maheu stated that a 40X12 deck is large. Is the house within the setback? Mr. Roy stated that at the greatest point the deck will encroach 10'.

Roland Maheu asked why such a big deck? One of the reasons for the deck is as a second egress and he can understand that but it sounds more like a party deck and is that justifiable?

Pat Wood referred to the aerial photo and where the prior deck had lined up with the abutters. Mr. LaCroix stated that the house could have been moved back, not really because the garage would have been closer to the street making it unsafe for backing out. There is now an area that makes it safe. The garage is about 40' from the street. They had already moved the house back from the water about 10-12 feet.

Pat Wood stated that the issue of the lot coverage, the state does not include the deck in the lot coverage issue. Where the deck is supposed to be does not inhibit any more than the previous deck would have. The deck is only 36' wide.

Steve Bogert asked if on the building permit there was an indication of the deck.

Jesse, from Outside in Construction, stated that the original plans showed the deck and then they were called and were told to either change the deck and or come to the city for a variance.

Steve Bogert asked why they did not come to the board before pouring the foundation to seek a variance.

Pat Wood explained that the new deck could have been put in the exact footprint and had they left the old footings they would not be here.

Steve Bogert asked again why they did not come to the board prior to asking a foundation.

Pat Wood replied that if they did the deck the way it was prior to construction then it would not be in fitting with the neighborhood but they wanted to make it more aesthetically pleasing and fitting to the neighborhood which is why they are asking for the variance. Mr. Wood pointed out that if you look at the green line it shows the existing house and deck, had they done exactly the same they could have, they squared off the house to be more fitting to the land and neighborhood. 3x5x12 deep is what is actually in need of the variance. The England's have done their best to make the property in compliance minus this 100 sf of decking as proposed. It is a minimal request overall.

Roland Maheu inquired why a 12' deck and not a 10' deck?

Mrs. England stated that the deck is off of the dining room and family room.

Mr. Ray, stated that the deck is off of the first floor of the property over the raised walkout basement.

It was suggested that a site visit be done to see the property.

Gail Ober stated that it is easier to go look separately than as a board and trying to convene a meeting, Mike Foote opined that sometimes it is better to go as a board.

Steve Bogert asked if there were any other questions or closing comments.

Pat Wood stated that the Englands have reduced overall lot coverage, the house has been moved back beyond 50' setbacks and a great deal of effort to meet the setbacks. If the board would like to come out it could be arranged.

Steve Bogert closed the public hearing.

Mike Foote stated that in full disclosure looking ahead of time, knowing a deck was going to be built that it could have been done without encroachment he would have thought this would have been presented earlier. Just his observation.

Steve Bogert expressed that he somewhat feels the same.

Gail Ober stated that she looks at the shoreline map and it does jog in from the neighbors' shoreline, she will be inclined to vote against the variance but that she would be more likely to be in favor with an 8 or 9' deck. For her it is a no vote or continuance with a different configuration.

Mike Foote stated that he thinks you will find the stairs will move depending on the height. From the lakeside that would not be the cleanest lines to have a zig zag staircase.

Gail Ober further stated that from what she has heard tonight it does not fit with the neighborhood and she would like to see the encroachment made less. That is not to say she would not consider a smaller deck.

Roland Maheu voiced that he has a problem with the size of the deck, he stated the house does need a deck as there is a drop, but he is concerned about the size and that when you are a builder you should look in to these things beforehand.

Mike Foote opined that it certainly seems that the room for compromise is in the encroachment to the setback.

Steve Bogert stated that he is opening back up the public hearing based on discussion for one question. His statement directed to the applicant an Attorney was; We can continue this to next month and give you all an opportunity to revisit the size of the deck or we can close it and go with a vote.

Pat Wood inquired if a ten foot wide deck be better.

Gail Ober stated she would be ok with 10' based on the shoreline jutting in.

Pat Wood asked if they could amend the deck at this time for a possible approval.

Steve Bogert re-closed the meeting.

Steve Bogert stated that it sounds like the Board would be ok with 10'. Roland Maheu still feels ten feet is too much but he can compromise.

**MOTION:** Gail Ober moved to approve the variance from Section 235-66: C and section 235-19 F of the zoning ordinance, to allow for the England's to build no more than a 10' deck with a staircase for a second egress so long as it does not exceed 42', including the staircase, from the narrowest/closest point to the shore.

1. The variance will not be contrary to the public interest because it does not violate basic zoning ordinance or the purpose of the ordinance for the district.
2. The variance would observe the spirit of the ordinance as it is in-line with what the rest of the neighborhood looks like, it does not violate the basic objectives, and will maintain a safe and healthy condition for the water
3. Substantial justice will be done as this is the fair thing to do based on the mitigating factors of the lot.
4. Neighboring property values will not be diminished
5. Literal enforcement would not result in an unnecessary hardship and the hardship lies within the shape of the lot and the shoreline. A literal enforcement would become a hardship.

**CONDITIONS:** With the conditions that the deck is not closer than 42' feet or 10' from the house whichever is more restrictive, from the water at its closest point to the shore. That the stairway be configured so that it does not jut out further than the deck.

Seconded by Mike Foote. Motion carried 4-0.

Steve reminded the applicant that there are 30 days that the abutters can ask for a rehearing.

Pat Wood and Mrs. England thanked the board.

**OTHER BUSINESS;** There was none.

MOTION Roland Maheu moved to adjourn. Seconded by Mike Foote. Motion carried 4-0.

Meeting adjourned at 8:58 PM.

Respectfully submitted,

Wendy L. Patterson  
Zoning Technician :