Town of Stoddard Preliminary

Zoning Board of Adjustment

Hearing and Meeting Minutes

 February 19, 2022

The Chairperson called the meeting to order at 7:33 pm

Pledge of Allegiance was led by the Vice Chairperson

Roll Call: Franz Haase Vice Chairperson, Jason Kovarik, Herb Healy Chairperson (via Zoom), Doug Summerton,

Alternate: Milosh Bukovcan, sitting in for Bud

Members Excused: Bud Record

Others present: Harry Power Compliance Officer, Applicants: Bill Yaglou and Loren Patten, Geoff Jones, Conversation Commission

Public Hearings

* Request for a Variance by William Yaglou (The Yaglou Family Trust) concerning Article III, Section 1 of the Stoddard Community Planning Ordinance for a building expansion on the property located at 22 Lookout Lane, Stoddard, NH, Tax Map 136, Lot 032 in the Lake District. Applicant proposes to build an addition that would be less than 25 feet from the neighboring property line. The Secretary read the public notice aloud and noted it was posted on the Stoddard Town website, Keene Sentinel and at the Town Hall. Abutters and applicant received copies of the notice via certified/receipt requested mail.
* Franz explained the Board is short one member and Milosh is sitting in for Bud on this hearing.
* Franz read aloud the rules of procedure for the hearing to those present.
* Mr. Yaglou introduced himself and explained they want to build a small office and bathroom off the master bedroom. He shared his plans with his neighbor who helped to stake out the addition. It’s a simple stick-built construction to match the house itself. Mr. Yaglou brought in a copy of the approved Shoreland Permit dated January 31, 2023. Franz read a letter from Robert & Peg Walther abutters, saying they approve of his project. He then asked for questions regarding Mr. Yaglou’s project. Maps diagrams and pictures of the project were available for viewing.
* The map shows his building is quite a distance from the road so there is no concern for noise affecting others. Herb asked for clarification of abutters across the road. Bill stated he owns that lot also, there are no other abutters. Herb asked if he has a permit for the additional bathroom. The layout of rooms shows the master bedroom currently has no bathroom. Franz stated there is no consequence of the extra bathroom if there is no additional bedroom. Franz stated this is a thorough application with photos, diagrams and a letter from the abutter. Franz asked if anyone in the room is against the project -there were none. Franz feels there is no need for a site visit. Herb asked if the addition will have a foundation under it, Bill replied the house has a block foundation and the addition will match it. Doug asked about a silt fence. Bill replied there will be a silt fence on the water side. There will be no heavy equipment such as an excavator on the property as the house sets on granite and he will shovel the dirt by hand. Herb asked about conditions listed on the Shoreland Permit. Franz looked over the Shoreland Permit and concluded there are no conditions on the permit.
* Franz asked for comments. There were none. Doug made a motion to close the public part of hearing and Jason seconded the motion. All were in favor. The public section of the hearing is closed. Franz asked Milosh, Doug, Jason and Herb if they have any concerns or questions – they did not. Herb said the application, pictures, sketch and permit are all in order and explain the project well.
* Franz explained the process and purpose of reviewing the five criteria to the audience. He then read each criterion aloud for discussion with members.
* Worksheet: Franz stated Mr. Yaglou did a wonderful job on completing the application. 1.) Granting the Variance is not contrary to the public because: Jason – the project has no adverse effect on the public or neighbors, and maintains the rural nature. 2.) Spirit of the ordinance: Doug -The project prevents overcrowding. 3.) Milosh - Does substantial justice: Improves the living conditions. 4.) Values of surrounding properties: Franz-The project will not diminish the value of neighboring properties but will improve them. 5.) Unnecessary Hardship - Herb **5 A1** does apply as the extension into the property along with the neighbors supportive letter. Franz – there is a fair & substantial relationship as the house was built in 1962 prior to the ordinance, distinguishing it from other properties. **Part 5 A2** the proposed use its reasonable because having a bathroom accessible to a master bedroom and office is reasonable use of the space. We are not basing the decision on possible future handicap of the applicant. **Part B** does not apply in this instance.
* Doug made a motion to vote the Variance as described in the application. Milosh seconded the motion. Roll call vote was taken: Milosh yes, Doug yes, Jason yes, Franz yes, Herb approves. Franz addressed Mr. Yaglou saying his Variance is Approved and explained he will receive a letter within 5 days.
* Appeal for Special Exception by Loren Patton and Sherry Williams to Article XII, Section 4 of the Stoddard Community Planning Ordinance for an addition of a deck on the property located at 219 Eva Lane, Stoddard, NH, Tax Map 121, Lot 09 in the Lake District. Applicant proposes to build a deck that would extend into the 50-foot Wetland buffer area. The Secretary read the public notices for both the Special Exception and Variance.
* Franz stated the rules of procedure read previously apply to this hearing also. Mr. Patton was present for the original reading.
* Appeal for a Variance by Loren Patton and Sherry Williams to Article III, Section 1 of the Stoddard Community Planning Ordinance for addition of a deck on the property located at 219 Eva Lane, Stoddard, NH Tax Map 121, Lot 09 in the Lake District. The deck would be less than the 25-foot setback required from the neighboring property line. The Secretary read the public notice.
* Milosh asked to recuse himself from the voting in this hearing as he is an abutter to Mr. Patton. Franz explained that would leave only 3 members and 1 via zoom which would mean Mr. Patton would need 3 positive votes to be approved. He has the choice to wait and reschedule. He chose to move ahead with the hearing. Herb asked to address
* Herb addressed Mr. Patton explaining a Special Exception is asking for a use to be permitted under special circumstances. The applicant must have sufficient evidence to meet the conditions in the Ordinance. Herb read the special exception from the wetland ordinance. Section 3 must be met, A) development & structure and land use will not diminish the wetland area with runoff. B) No destruction of natural wetland. C) show no unnecessary or expenses to town to maintain essential utilities (fire dept access, enhanced risk of fire). Applicant having approval from DES may be sufficient for items A & B. He needs to address C. Also, written approval from the Conservation Commission is necessary according to the Wetland Ordinance. It is not clear if the ZBA should reach out to planning board.
* Franz asked Mr. Patten to present his application for Special Exception to build within the 50-ft wetland buffer. Mr. Patton addressed the issues A, B and C above. stated he wants to build a deck above the current boat shed. It will come 11 feet out from the house. He will also remove an unsafe outside stairwell. The house was built in 1962 and at that time he was allowed to come out 12 feet for a deck. The lake side deck would make the house more functional as it will attach to stairs and doors at either side of the house. The deck will be flush with the current boat house making the lake house more useable. The construction will be on rock outcrop in front of the house on the lakeside. He will not change the shore line as there is a concrete retaining sea wall along the shore that had been there when he purchased it. It is a very unusual construction and he will not be changing the shoreline at all. There is a small alcove of stone steps which has vegetation around it, which he will not be touching. The current house stairs will be removed as they are unsafe. Stairs at the sides of the house are currently at grade and would be used to access the lake. It is unnecessary for new stairs to be built. He would be adding posts to support the deck on the rock outcrop. He stated the deck would make it easier for emergency personnel to access the house.
* Franz asked where he was in the process of obtaining a Shoreland Permit. Applicant states he wanted to wait to see how tonight’s hearing goes prior to him submitting in his application for Shoreland Permit. Herb stated the CPO requires the Shoreland Permit must be presented to the Board, or our approval would be contingent on him receiving approval. Herb would like a site visit and written opinion from the Conservation Commission, as our wetlands are very important. Franz read the ordinance (Section 5a) where it requires a rendered opinion from the Conservation Commission and not specifically a written one.
* Franz asked Mr. Jones for his opinion as representative of the Conservation Commission. Geoff asked for a better definition of wetlands. Franz read the ordinance Article 12, Section 4 requirement. Herb stated Article 12, Section 6 of the wetlands ordinance specifically spells out the 50-ft buffer around all surface waters. By advice of legal counsel all the restrictions and provisions of the ordinance apply to that 50-ft buffer. Geoff said what is happening on Mr. Patten’s property pales with what he has seen up and down the lake. He visited the Patton property tonight. There are no hydrated soils, it is an elevated little peninsula, no wetlands and has a sharp edge to the lake shoreline. He states it’s already a highly altered site with terraced landscaped property. There is a concrete wall enclosing the shoreland. The construction is all above ground with a bit of soil that needs to be removed. Applicant will use the existing pathway to his dock. Geoff’s opinion is that this project has little to no impact on the site. There are no wetlands or shoreline concerns. Geoff is a licensed professional forester and a 25-year member of the Conservation Commission and feels confident he can render a decision for that Board on this project. He frequently looks at sights and is confident this project will have minimal impact and will not affect the 50-ft butter. He is willing to bring this item to the entire Commission if the ZBA desires. Herb and members feel comfortable with Geoff’s evaluation.
* Milosh asked based on the site is already altered, does he need a shoreland permit? Geoff was unsure. Franz called on Harry who said he does need a Permit by Notification according to RSA 483B:5. Loren stated he brought the permit application here in case there was something he needed to add or change. He was reminded, per the CPO, a copy of the accepted State Permit is required for this hearing.

Geoff stated a letter from the conservation commission would be good for the applicant to include with his DES permit application. Geoff has a letter with his decision with him tonight. He gave one to the ZBA, a copy to Loren for his application and will email a copy to Herb.

* Criteria under Article 12, Section 3 of the Wetlands Ordinance; A & B are covered by the DES permit, B is clarified by Mr. Jones inspection & letter. C no extra services to town, stair removal will provide a safer surface for public use and Is far away from any road.
* To satisfy Section 5 the Board must either have a site visit and/or have the DES permit. To prevent a conditional approval, Herb made a motion for continuance. The motion was seconded by Doug. Roll call vote: Doug yes, Jason yes, Franz yes, Herb yes. Mr. Patten agrees with the decision. This Hearing will be continued on March 16, 2023 at 7:30 PM at the Stoddard Town Hall.

* Mr. Patten Variance. The Notice read above included notification for the Variance and wasn’t repeated here. Milosh asked to be recused from voting as he is the applicants abutter.
* Franz asked Mr. Patten if the project has changed any since his presentation of the Special Exception. Loren said nothing had changed but for the Variance, he described that do to the angle of the property line, the left side of the existing door landing is 2.5 ft into the setback but the front of the new deck is within his property line. It’s not the entire width of the deck that is in question. Milosh is the abutter on that side of his property and stated he has no objections to the project and feels he may not require a Variance as the existing deck is what is within the setback. Franz viewed the larger, to scale plans which show 3.5 square feet of the new deck is in the encroachment area. Herb feels he still would need a Variance. Doug said we have had other applicants with similar circumstances.
* Franz asked for questions –could he shrink the deck to get it the required distance away from the property? There would be no way to shorten the deck as it would make the walkway too narrow to exit the door. Doug asked if any equipment is needed for this construction. Loren stated no equipment other than his hammer drill will be used. Jason asked how close is the deck to the shoreline. Mr. Patten stated the northern corner of the deck is about 21-ft to the shoreline. Herb asked how close the boatshed is to the shoreline. It is 10-ft to the shoreline. Where the deck ties into the boatshed, it is 12-ft. to the shore. Herb stated the applicant also needs a Variance from the setback from the shoreline.
* Herb shared legal counsel advice he recently received regarding Article 3 section 3 regarding the need for a Special Exception for work within 50-foot buffer zone and a Variance if less than 25-ft from shoreline as that constitutes a lot line for a setback.
* Franz suggested the property owner (state of NH) gives permission through the Shoreland Permit for the Variance. Can we vote to approve or disapprove the Variance as written tonight or does he need to resubmit a new Variance including both lot lines. Herb - if we go through with this the applicant would need a separate Variance and cost or he can amend this Variance to include both lot lines on one Variance. He could request a continuance and request a special meeting from the ZBA to hear him. Herb, Mr. Patten would like to amend this Variance application to include both lot lines (neighboring & lake line). He will apply for the Permit for Notification from the state for the SE and meet next month with the ZBA. Motion made by Doug to continue this hearing to March 16. Jason seconded the motion. Roll call: Doug yes, Jason yes, Herb yes, Franz yes.
* Franz asked should a site visit be scheduled? Jason & Doug are comfortable with Geoff’s report and Franz is familiar with the site. Herb would like to visit. Doug asked about photos. Doug made a motion to reopen the hearing. Herb seconded the motion, Jason yes, Doug yes, Franz yes, Herb yes. Doug made Motion to have a site visit. Herb seconded the motion. Roll call: Doug no, Jason no, Herb yes, Franz no. Herb said he is willing to visit the site on his own as an individual.
* Doug made a motion to continue the hearing at the next meeting. Jason seconded the motion. Roll call vote: Jason yes, Franz yes, Doug yes, Herb yes. Franz asked Loren if he could contact him to take some pictures or Milosh may take pictures of the deck and email them to Herb in case he doesn’t return in time to view the property. Loren said that would be fine. This Hearing is continued to March 16, 2023, at 7:30 PM, at the Stoddard Town Hall. Milosh is reseated.

Correspondence/Reports

* Compliance Officer report: Has a couple violations coming in. Maybe a building permit. Pit/patio state permit has been denied because Applicant did not reply to the state in time.
* Secretary: Bill from Matt Surge, legal counsel.
* Board Members: Jason – selectmen are looking to repeal item 4B of Article 12 of the wetlands ordinance which reads *“An application must be made to the Zoning Board of Adjustment for a special exception for any change in the use of wetlands.”* They agreed to put it on the town Warrant. If voted in, it would take affect July of 2023.
* By removing that sentence, property owners would have no relief from the Wetlands Ordinance. Herb stated he wrote a detailed email to the Selectmen pointing out the discrepancy and consequences of removing that line. It is unknown what their thoughts were for removing the line. Herb has reached out to legal services in regard to the town’s Wetland Ordinance and would like to share this information with members.

Meeting Minutes

* Review Jan. 19, 2023 Preliminary minutes, change first sentence, second paragraph on page 2, change septic to garage. Motion to accept as amended by Doug, seconded by Jason, everyone in favor.

Old Business

* Budget request update. Has been submitted to Selectmen.

New Business

* Review of communications re: Wetlands Ordinance (Article XII) of CPO: Does our wetland ordinance & state statutes allow municipalities to regulate wetlands around bodies of water 10 acres and less and public waters? Public waters are greater than 10 acres. Her asked the NHMA which replied, *the statute as written allows municipalities to regulate public bodies of water and in addition smaller bodies of water*. Herb also asked our legal attorney – does the shoreline constitute a lot line for purposes of Article 3 pertaining to setbacks. Would a project within the 50-ft buffer area need a Variance if it falls within the 25-ft setback from the lake? The Attorney responded, *yes, a Special Exception and Variance will be needed.* Franz clarified that a shoreline is considered a lot line. An approved Shoreland Permit may be the same as a letter of support from an abutter. We will need to find out who and how to notify at the State DES. Herb feels the Shoreland Permit application may notify them but he will investigate further. Herb stated we need to look at our process and forms to make application easier for property owners.

Public comment

* No comments

Adjournment. Doug moved to adjourn and Jason seconded. All voted in favor to adjourn the meeting at 10:25 pm. The next meeting will be held on March 16, 2023, at 7:30 pm at the Stoddard Town Hall.

Respectfully Submitted,

Kathleen Ellis

Secretary