Town of Stoddard Preliminary

Zoning Board of Adjustment Hearing

July 20, 2023

The Chairperson called the meeting to order at 7:30 pm

Pledge of Allegiance was led by the Chair.

Roll Call: Herb Healy Chairperson, Franz Haase Vice Chairperson, Bud Record, Doug Summerton

Alternates: Milosh Bukovcan, Loren Patton

Members Excused: Jason Kovarik

Others present: Harry Power Compliance Officer, Abutters: Fintan Moore, Jim & Liana Poodiack, Glenn Peters, Sherri & Mark Hodgson, Richard & Anita Shaw. Applicants: Sean Scott, Dan & Irina Owens, Melissa Aho-Rice, Robert Jalbert.

Public Hearing:

The Chair gave an introduction and explained the rules of procedure for the meeting along with an explanation of the criteria needed for approval of a Variance.

* The Secretary read the Notice of Hearing and where it was posted.
* An appeal by Sean Scott for a Variance concerning Article III, Section 1 of the Stoddard Community Planning Ordinance to build an upper deck and stairs within the required 25’ setback from the road, on the property located at 60 West Shore Circle, Stoddard, NH; Tax Map 124, Lot 12, in the Lakeside District.

Sean presented his project. He wants to restore the building with its original access from Whitney Road by adding stairs & a six-foot-wide deck that will run along the side of the building on the Whitney Road side, to gain access to the third floor. The original stairs/ramp existed at one time but have rotted away. The building has been abandoned for 10 years. The setback is 25’ to the edge of the ROW. His plans leave a setback of 19 feet. The deck will be elevated 3 feet above Whitney Road. The building will eventually have electricity, will not be a living space, will have no water or septic and is for storage only.

* Alternate Loren Patton will be sitting in for member Jason Kovarik for all of tonight’s hearings.

Herb asked for questions from Board, there were none. The Public was asked for comments. Mr. Moore abutter, spoke in favor of the plan. Ms. Poodiack abutter, asked about snow falling from the roof into the ROW. The Chair stated the project is on a non-conforming building. She also asked if he plans to create an ADU there, would that require a new hearing. Mr. Hodgson abutter, asked for an alternative plan for the placement of the deck & stairs. Applicant replied stating he has to stay within the footprint of original building and a steep slope on the north side of the building would make the alternate access very difficult. Herb asked if there were any new questions, there were none.

Doug made a motion to close the hearing. Franz seconded the motion. The Board moved into deliberation**.** Herb reviewed the criteria for voting on the Variance. Discussion on the criteria was as follows:

**Regarding Criteria 1)** It would not be contrary to the public interest because, proposed deck & stairs will not impede the public way. The 6-feet is a minimal intrusion into the setback. **Regarding Criteria 2)** The deck & stairs give applicant safe entry to his building. Alternate stairs would be unsafe do to elevation of land. **Regarding Criteria 3**). Would do substantial justice. It allows access to the building in a safe and reasonable manner and results in full use of the property and structure. The project restores the look & function of the original building. It does not affect the homes West Shore Circle.

**Regarding Criteria 4)** Values of surrounding properties would not be diminished. He has improved the dilapidated building, stayed within the footprint of the original building and restored it’s use for storage.

* Herb spoke in full disclosure stating he is a trustee to a Living Trust whose land abuts the applicants property. His personal property does not abut the applicants and neither has he met the applicant before tonight’s meeting. Sean stated he has not met Herb until tonight. Herb asked if any member feels he should recuse himself from this case. No members felt he should. He asked the public if they felt he should recuse himself and no one spoke.

**5.1a.) Unnecessary Hardship** The very steep topography is unique to this property. The

building has frontage on two roads and entry to the third floor is difficult. Without the

Variance he would have to come from the north side, remove a tree, and build a much

larger staircase. The proposed use is reasonable as the deck and location of stairs has

minimal impact to Whitney Road.

**5.2**) The project allows for safe access to the third floor and restores the use of the

building for storage.

Doug made a motion to approve the application as written. Bud seconded the motion. Vote by roll call was taken: Franz Approve, Loren Approve, Herb Approve, Bud Approve, Doug Approve. The vote is unanimous for approval for deck and stairs as submitted.

Mr. Scott will receive a Decision letter for Approval and is clear to start work. He already has a permit from the Compliance Officer. This hearing was recommended to him by the Selectmen to assure everything regarding the project was in order.

* All three applicants for Special Exception regarding Wetlands were present as the Chairperson explained the 50-foot buffer of the Wetlands Ordinance and the difference in procedure for a Special Exception. He read the three conditions of the ordinance that must be met. He also explained that no one on the Board is an expert on the environmental aspects. We defer to the NHDES for environmental impacts and the Conservation Commission must also comment on the project per the Stoddard Wetland Ordinance. There were no members of the Conservation Commission present at this evenings meeting.
* The Chair proposed that we hear the 3 projects with approvals contingent on “no objections” from the Conservation Commission. Doug made a motion to go ahead with the hearing with approvals contingent on “no objections” from the Conservation Commission. Bud seconded the motion and members voted unanimously to proceed.
* The Secretary read the Notice of Hearing.
* Appeal by Robert Jalbert Trust for a Special Exception to Article XII, Sections 4 &

5 of the Stoddard Community Planning Ordinance to seek relief to repair/replace a walkway to dock and extend dock within the 50’ buffer area of Island Pond, on the property located at 781 Route 123 North, Stoddard, NH; Tax Map 131, Lot 13, in the

Lakeside District.

* Mr. Jalbert purchased property last fall. His home is on the hill and the property extends across Route 123 to where the dock is located. It is on the survey map and runs about 600 linear feet along the road and is full of boulders. The pre-existing dock was in poor condition and the steep walkway consisted of boulders and a few boards with very poor access. The applicant experienced a fall on the walkway. He improved the walkway and has installed eight 3-foot wide wooden steps to get over the boulders to the ramp to his dock. There was no cutting of trees, no disruption to vegetation and no concrete. Feels it improves access for EMS to that portion of Island Pond as there is no other access in that area. He has a DES permit by Notification, the project has been completed.
* The Chair asked the Board for any comments and discussion. He has put some boulders along the edge of the drop off so no one would park close to the edge and go over. He has put up no parking signs. Stairs go to land and then a ramp to his aluminum dock. He has not brought in any gravel, what is there is pervious.

The Chair asked the Board for any further questions. There were none. He asked the public for any questions. Mr. Poodiak asked a question regarding the DES permit. Ms. Rice asked about how the recent high water affected his dock & stairs. His area is one of the higher areas along Rt 123 and there were no problems. The Chair asked if there were any more questions or comments from the Public or Board. There were none.

Bud made a motion to close hearing, Loren seconded the motion. A vote was unanimous to close hearing. The board went into deliberations.

When asked by the Chair, Board members had no questions regarding environmental impact and deferred **Criteria Items 1 and 2**) to the NH DES and the Conservation Commission for any objection. **Criteria 3) T**he project does not impact or affect EMS, emergency personnel, telecom nor any property owner along Route 123 North. The utilities run on the opposite side of Route 123.

Bud made a motion for conditional approval by the ZBA, subject to no objection from the Conservation Commission, Doug seconded the motion. A Roll Call vote was taken: Doug Approve, Bud Approve, Herb Approve, Franz Approve, Loren Approve. Approval is conditional until the Board receives notice from the Conservation Commission. His DES Permit by Notification will be mailed back to him after a copy is made for the case file.

* The Secretary read the Notice of Hearing.
* Appeal by Dan and Irina Owens for a Special Exception to Article XII, Section 3 of the Stoddard Community Planning Ordinance to build a wooden deck within

the 50’ wetland buffer area of Dead Brook on the property located at 43 Brook

Drive, Stoddard, NH; Tax Map 130, Lot 18, in the Rural Zone.

Mr. Owens presented his project: he presented a diagram of the proposed 12ft x 20ft pressure treated deck. They have a NHDES permit by Notification. He stated there is no rush on this project as the deck is for their enjoyment to overlook Dead Brook. They will be putting concrete sonotubes in the ground to support the deck. There will be no vegetation disruption other than the holes for the sonotubes. Herb asked the Board for any comments or questions. Discussion followed: The ground is slightly sloped to an embankment then goes to the waterline. The deck is not over the water. Erosion control is covered in permit, he plans to hand dig the holes for the sonotubes, no heavy equipment is planned to be used. He originally planned a rectangular deck but the State said there was a setback issue so, he has a new design removing that corner of the deck to comply with NHDES. The ZBA and DES applications are for the approved design. Dan was reminded the deck can’t be enclosed or covered. Also, that the Special Exception is conditionally approved the way it is written. Any changes he makes would need a new application. The stairway on the road side is staying the same. One set of stairs from the old deck will be moved to Dead Brook side and the two decks will be joined. The Chair asked the Public for any comments. He was asked if the deck is detached. He answered it is free standing. It will have 2 sets of stairs to the ground. One set toward the water and one set off an existing deck. The Chair asked if there were any more questions from the Board. There were none.

Doug made a motion to close the hearing, Bud seconded the motion. The Board voted in favor to close. **Conditions 1 & 2)** are deferred to DES and the Conservation Commission. **Condition 3).** No impact is seen to EMS or utilities. Doug made a motion for conditional approval subject to no objections from the Conservation Commission. Franz seconded the motion. Roll call was taken; Loren approved, Franz approved, Herb approved, Bud approved, Doug approved. Approval is conditional until the Board receives notice from the Conservation Commission. The secretary will call the Owens when she hears from the Conservation Commission, will also follow up with a letter and inform the Compliance Officer.

* Secretary read the Notice.
* Appeal by Melissa Aho-Rice and Darren Rice for a Special Exception concerning: Article X11, Section 4 & 5 of the Stoddard Community Planning Ordinance. The Applicants seek relief to build a patio/firepit within the 50-foot buffer area of Highland Lake on the property located at 216 Fox Run Road, Stoddard, NH. Tax Map 121, Lot 23 in the Lakeside District.
* The Chair explained, for full transparency to the audience and Board members, the Board is aware NHDES has denied her permit without the ability to reapply. The ZBA cannot grant approval of an application without approved permits from the NHDES and Town Conservation Commission per the Community Planning Ordinance. He also explained she doesn’t need the permits to have a hearing, but the Board will be unable to approve the Special Exception without them. If the Board is aware of the definite lack of permit, they have a choice to deny the application without prejudice (which makes it possible for her to apply again should she obtain a permit for the same project). He further explained, to have her application outright denied by the ZBA she would not be able to reapply to the ZBA for the same project. Ms. Rice explained the timeline of conversations and documentation of correspondence with NHDES. She stated she wants to do the right thing but can’t find what that is. The Chair stated the Board is empathetic to her position and will recommend the Board deny the application without prejudice giving her the opportunity to work things out with the state. The project is already completed. The Chair asked if members have an alternative idea for the situation. Franz suggested approving the application with condition she gets NHDES approval. The Chair responded saying the town has formal notification from NHDES stating there is no appeal available to the applicant. Lauren apologized for the difficult time Ms. Rice has had with her project and recommends denying without prejudice.
* The Chair asked for a motion. Doug made a motion to deny the Special Exception for construction of the fire/pit patio per her application without prejudice. Bud seconded the motion. Roll Call vote: Doug Yes, Bud Yes, Herb yes, Franz Yes, Loren yes. The application is denied without prejudice.

Correspondence/Reports

Secretary- Will work on a spreadsheet to record Non-public meetings.

Compliance Officer- Has met with owner of property on Route 9, regarding storage units on Route 9. No home building, heat or water on the site.

Board Members- Herb had multiple correspondence with our Town Administrator, NHDES and legal counsel reference the Aho-Rice Special Exception. The board’s action was as legal counsel recommended.

Meeting Minutes - Review & approval of June 15, 2023 draft minutes. Bud made a motion to approve, Loren seconded the motion, Doug recused himself as he wasn’t present, Franz, Bud, Herb and Loren voted to accept the minutes as written.

Old Business

* Discussion on ZBA fee structure & expense recovery for appeals. Action item; get NH Legal service advice to set up fee structure: We have a flat fee structure that doesn’t cover the cost of secretarial support or for letters & newspaper notice. Suggestion from Legal is when an application is considered complete and money is received, the clock starts. Proposal: change our process, update the fee and a procedure to send out a bill to applicant based on number of abutter letters and cost of newspaper announcement. ZBA must get the payment back prior to the hearing. Also discussed to create a one step process. Question raised is the fee for the secretary? Second action item: to get price from Keene Sentinel. Members agreed to continue discussion at the August meeting.

New Business

Public comment – non-agenda items

Non-public session (if necessary)

Adjournment Motion made to adjourn by Doug, Bud seconded the motion. All were in favor. Meeting adjourned at 10:35 pm. The next ZBA meeting is August 17, 2023, at 7:30 PM at the Stoddard Town Hall.

Respectfully Submitted,

Kathleen Ellis

Secretary to ZBA