

**TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT**

**Minutes
September 1, 2020**

Present: Chairman Lee Sawyer, Members Walter Batchelder, Phil Cournoyer, Marc Tieger, Andy Webber, and Erlene Brayall (alt)

Staff: Jo Anne Carr, Code Enforcement/Building Inspector Rob Deschenes, Recording Secretary Newton, David Chamberlain

Via Zoom: Elizabeth Webster, ConCom

Other: David & Alisa Nash, Susan & Greg Hunt, Philip Bailey and Susan Roston

Chairman Sawyer called meeting to order at 6:05 pm

MEETING MINUTES APPROVAL

On a **motion** by Tieger, seconded by Cournoyer the minutes for the **August 4, 2020** meeting were approved as presented. (4-0-1) *LS abstained*

On a **motion** by Cournoyer, seconded by Batchelder the minutes for the **August 7, 2020** site walk were approved as presented. (5-0-0)

On a **motion** by Tieger, seconded by Cournoyer the minutes for the **August 10, 2020** deliberations were approved as presented. (5-0-0)

ZBA 20-10 David & Alisa Nash, Owner (**rehearing**)
150 Gilson Rd., Map 230 / Lot 25 Zone: Rural, without town water

Variance – The applicant requests a variance to allow an expansion of a non-conforming use (screened porch) within the shoreland and wetland setback. (Land Use Code, Zoning Ordinance Sections XX, 20.5.2 & XIX, 19.4.2)

Presentation: Alisa Nash

Mr. and Mrs. Nash requested a rehearing to better understand the reason for the denial of their original application in July 2020. They are unclear as to which of the five criteria were not met. The reasons for denial were not clearly stated in their Letter of Decision.

Much of the testimony at the previous hearing focused on the view from the neighboring property owned by Bailey/Roston. Mr. & Mrs. Nash have been working with an arborist to address this particular concern. They propose pruning 4-6 branches from the hemlock tree to create a new lake view for Bailey/Roston that would be comparable to what they had. Bailey/Roston confirmed that this agreement was mutually acceptable. P Cournoyer asked if the owners need to notify anyone of the tree trimming. Mrs. Nash responded no. Mrs. Roston added that tree trimming is covered by the shoreline protection act. The tree cannot be taken down, but it can be trimmed.

Mrs. Nash outlined the reasons why she felt they had met the five criteria with their request.

1. They do not feel that the project would be a detriment to the neighborhood as was stated in the original hearing.

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2. Spirit of the ordinance. The purpose of the ordinance is to protect the shoreline/wetland. They consulted an environmental scientist in order to keep the environmental impact of the project to a minimum. They limited the size of the porch and planned to construct it on piers to allow rainwater filtration underneath. No existing vegetation would be disturbed. The increase in impermeable surface would be minimal, a difference of 8.9% to 9.4%. The additional impervious surface would actually be slightly less than this as the courtyard already contains two flagstone pathways. Since the site visit, the project has received State approval.
3. Substantial justice. Mr. & Mrs. Nash feel that it would be an injustice to them, as property owners, not to be able to use their property as they wish.
4. Will not diminish the value of surrounding properties. Based on the deliberations at the previous meeting, they believe this has been met.
5. Unnecessary hardship. This property has a unique dimension, it is very narrow and sits entirely within the wetland/shoreline setback, much of it is swampland. There is no location on the property to add a screen porch that wouldn't violate the strict enforcement of the ordinance. The property cannot be reasonably used in strict conformance with the ordinance. Not granting the variance results in an unnecessary hardship for the owners. The screen porch would provide protection from mosquitos as well as protection from slippery walkways in the winter as they are unable to use deicer due to the proximity to the lake.

P Bailey noted that the structure would be fairly large, 12 x 20, but stated they have no objection.

W Batchelder noted the ordinance is set up to protect the shoreline. This project is held to a higher standard due to its location. The owners are asking for a third non-conforming structure. He does not feel this meets the spirit of the ordinance which is in place to prevent growth and congestion in the shoreline. D Nash pointed out that the structure would not be any closer to the lake.

W Batchelder stated, in his opinion, the porch is more of a convenience than a hardship.

E Webster added she is pleased that the owners have received NHDES approval; however, she remains concerned about the increase in impervious surface so close to the shoreline. Recent rain events have demonstrated that runoff can be a problem.

A Webber stated his main issue is the expansion of a non-confirming use. The primary structure (house) has a footprint of 1,488 sf, the proposed porch is 240 sf +/-, this is not a limited expansion. Anything added to the house becomes part of the primary structure. D Nash noted that the living space of the house is 1,900 sf. A Nash clarified the porch would be 256 sf.

In addition, A Webber does not feel there is a hardship. Every property on that side of the lake has similar dimensional constraints. A Nash noted their lot is the only one that narrow with a structure. L Sawyer agrees that this building lot is unique.

M Tieger was initially concerned that the project was not in the best public interest due to the neighbor's concern with the loss of their view. Mr. & Mrs. Nash have worked out an agreement concerning the view with the abutters that is amenable to both parties. E Webster feels that this could have a negative effect on the neighbor's property value.

A Webber asked is it legal to cut for a view around the lake? S Roston responded, the law states that you are allowed to trim trees to provide a view. L Sawyer asked the abutters if they felt the view would be comparable. P

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Bailey responded, we will have a view of the screen porch; the view will not be as nice but they have agreed to this compromise to be good neighbors.

P Cournoyer, R Deschenes and L Sawyer discussed roof options, flat roof vs. a shallower pitch, etc. A Nash stated the plan shows the porch with the same roof pitch as the cottage. A Webber noted the plans state the roof would not be higher than that of the cottage.

Chairman Sawyer closed the public hearing.

DELIBERATIONS

The board considered and voted on each of the five criteria.

1. The variance will not be contrary to the public interest. (5-0-0)
2. The spirit of the ordinance is observed. (3-2-0) *AW & WB opposed*
A Webber & W Batcheler do not feel the proposal meets the spirit of the ordinance. WB believes the spirit of the ordinance is to limit the growth around the waterways. All of the existing structures are within the 75 foot setback.
3. Substantial justice. (4-1-0) *WB opposed*
4. The values of surrounding properties are not diminished. (5-0-0)
5. Unnecessary hardship. (3-2-0) *AW, WB opposed*
W Batchelder does not feel there is a hardship. The porch is a convenience and they have reasonable use of the property.
L Sawyer stated the hardship is inherent in the land.
A Webber stated they have reasonable use of the land.
M Tieger stated the hardship is inherent in the land because it was allowed to be developed that way.
L Sawyer stated that lot was allowed to be developed prior to zoning restrictions.

ZBA 20-16 Susan & Greg Hunt, Owners, Dan Scully, Agent
139 Gilson Rd. - Map 230 / Lot 22 Zone: Rural (without town water & sewer)

Variance – The applicant requests a variance to amend a previously approved variance for a non-conforming structure within the building setback to allow an exterior stairway. (Land Use Code, Zoning Ordinance Section V, 5.7 and Section VI, 6.1)

Presentation: Greg Hunt

Mr. & Mrs. Hunt received a variance from the Board last year to build a garage within the setback. The original garage design called for a drop-down staircase inside the garage. During construction the hillside to the west of the garage was excavated. This additional space is enough to accommodate an exterior staircase and leave more room inside the garage for storage.

A Webber asked for clarification of the location of the staircase. Mr. Hunt responded the staircase would be on the back/west side of the garage, away from the lake. It would not be visible to neighbors or from the road. P Cournoyer asked where is the property line at the back (west) side of the property? Mr. Hunt responded the property line extends back a least another acre. They would not encroach on the rear setback.

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Susan Roston/Phil Bailey, abutters have had no issues with the newly constructed garage or this request. The staircase would not be visible from their driveway.

L Sawyer asked why do they need a variance? BI/CEO Deschenes responded, the original approval was very specific. This is an expansion of the square footage of a structure that is almost completely within the side setbacks.

Chairman Sawyer Closed the Hearing

On a **motion** by Tieger, seconded by Webber to waive site visit. (5-0-0)

DELIBERATIONS

The board considered each of the five criteria and had no concerns.

DECISIONS

ZBA 20-10 David & Alisa Nash, Owner (**rehearing**)
150 Gilson Rd., Map 230 / Lot 25 Zone: Rural, without town water

Variance – The applicant requests a variance to allow an expansion of a non-conforming use (screened porch) within the shoreland and wetland setback. (Land Use Code, Zoning Ordinance Sections XX, 20.5.2 & XIX, 19.4.2)

On a **motion** by Cournoyer, seconded by Batchelder the request for a variance to allow an expansion of a non-conforming use to construct a 256 SF screened porch within the shoreland and wetland setback was granted as presented per testimony given and per plan submitted. (3-2-0) *AW & WB opposed*

ZBA 20-16 Susan & Greg Hunt, Owners, Dan Scully, Agent
139 Gilson Rd. - Map 230 / Lot 22 Zone: Rural (without town water & sewer)

Variance – The applicant requests a variance to amend a previously approved variance for a non-conforming structure within the building setback to allow an exterior stairway. (Land Use Code, Zoning Ordinance Section V, 5.7 and Section VI, 6.1)

On a **motion** by Tieger, seconded by Webber the request for a variance to reduce the side setback to 10 feet to add an exterior stairway to the garage was granted as presented per testimony given and per plan submitted. (5-0-0)

Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.

ADJOURNMENT

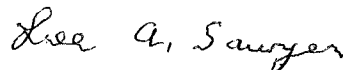
The meeting adjourned at 7:56 pm

Submitted:



Rebecca Newton
Recording Secretary

Attest:



Lee A. Sawyer
Chairman, Jaffrey ZBA