

TOWN OF JAFFREY NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
August 2, 2022

Present: Members Marc Tieger, Walter Batchelder, Erlene Brayall, Carl Jevne, Phil Cournoyer (alt), David Jeffries (alt), Judy Lucero (alt) *will vote*

Absent: Lee Sawyer

Other: Elizabeth Webster, Conservation Commission, Chris Austermann, John Lucero, Kathy McCloy Raleigh, John Raleigh, Rosemary Poole, Branwen Gregory

Staff: Code Enforcement/Building Inspector Rob Deschenes, Recording Secretary Newton

MEETING MINUTES APPROVAL

On a **motion** by Jevne seconded by Batchelder the minutes of July 5, 2022 were approved as submitted. (4-0-1)
JL abstained

PUBLIC HEARING

Vice-Chairman Tieger called the public hearing to order at 6:05 pm. Notice of hearing for case No. ZBA 22-17 & ZBA 22-18, as advertised in the *Monadnock Ledger*, copies were posted in the Town Office building, the Library and the town website; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicant.

PUBLIC HEARING NEW ITEMS

ZBA 22-17 Rosemary Poole, Owner
831 Mountain Rd Map 204 Lot 14.1 Zone: Mountain Zone without town water

Special Exception – The applicant requests a special exception to allow the construction of a porch within the property line setback (Land Use Code, Zoning Ordinance Section VI, 6.7)

Presentation: Rosemary Poole

Ms. Poole is seeking special exception to construct an 8' x 8' porch within the property line setback. The purpose of the porch is to allow egress directly from the second floor of the home for an elderly relative that will be moving in with her. Currently, the only exit from the home is on the main floor.

The porch would meet all the criteria for a Special Exception. It is in an adequate location, will be handicapped accessible, will not be detrimental to the neighborhood and will not extend more than 10 feet into the setback.

The property was subdivided in 2008 at which time they were granted a variance to reduce the side setbacks.

Branwen Gregory, abutter stated that she is in favor of this proposal as the relative is her father.

On a **motion** by Batchelder, seconded by Jevne the Board voted to waive the site visit. (5-0-0).

ZBA 22-18 Chris & Sallie Austermann, Owner
98 Gilson Rd Map 230 Lot 38 Zone: Rural without town water

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Variance #1 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the property line setback (Land Use Code, Zoning Ordinance Section VI, 6.1 & VII, 7.2.3)

Variance #2 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the Shoreland Overlay District (Land Use Code, Zoning Ordinance Section XIX, 19.4.2 & 19.6.2)

Variance #3 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the Wetland Conservation District (Land Use Code, Zoning Ordinance Section XX, 20.3 & 20.5.2)

Presentation: Chris Austermann

Mr. Austermann is seeking a variance to build a deck off the rear (lake side) of their summer cottage. Mr. Austermann noted that his mother Sallie recently passed away.

The structure on the property was once a boat house built in the 1940s then converted into a summer cottage in 1995. The one-bedroom cottage has roughly 600 SF of living area. They are unable to add additional bedrooms to the cottage so the 12' x 20' deck would expand the living area. The house sits approximately 5 feet from the Raleigh property line, the deck would be approximately 20 feet from the property line and 43 feet from the wetland/shoreland.

Elizabeth Webster, Conservation Commission. This is an expansion of a non-conforming structure which extends closer to the shoreline. Decks are considered impervious. She is concerned that the structure could alter the runoff pattern near the pond.

Mr. Austermann read his answers to the five criteria from his application:

- 1 Granting the variance would not be contrary to the public interest because the proposed construction methods will result in minimal disturbance to the soil and no removal of vegetation, except for one hemlock tree, thereby not effecting the present buffer of the lake.
- 2 If the variance were granted, the spirit of the ordinance would be observed because it will blend in with the natural environment. Since according to Webster's Dictionary, there are 14 entries for "spirit," I am using the following: "General intent or real meaning"

My family and I have enjoyed our 3-season stays at Thorndike Pond for over 75 years. My grandfather, father and uncles built a boat house at 98 Gilson Rd in the 1940's to store canoes and row boats so the Shattuck and Austermann families and their co-workers could enjoy the lake after long days working as proprietors of the Shattuck Inn. In 1995, my parents, Donald and Sallie Austermann converted the boathouse to a summer cottage so they could live there from June-September as a reprieve from the heat in North Carolina. When my father passed in 2009, my mother moved to Peterborough and continued to spend summers at the cottage. In 2017 she moved to independent living in RiverMead. While her physical and cognitive facilities are diminishing, she still enjoys spending as much time as possible at the cottage with friends and family. Currently, the only way for her to have a view of the water is through a glass door or take a painful and dangerous walk on uneven terrain to the dock. This will allow us to observe the spirit of Thorndike; which is to enjoy the peace and tranquility of its natural beauty.

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- 3 Granting the variance would do substantial justice because it would allow disabled and physically limited owners and guests to enjoy the lake atmosphere without risking injury by traveling to the dock. The ground is uneven with several rocks between the cottage and water.
- 4 If the variance were granted, the values of the surrounding properties would not be diminished because this activity would enhance the existing structure on the property, which would increase the value, positively affecting neighboring property values.

5 Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to that property because the original structure, built in the 1940's existed prior to the current ordinance.

And:

- ii. The proposed use is a reasonable one because it would allow the owner and elderly guests to enjoy the lake atmosphere which they would otherwise would not be able to do because of the uneven ground and the time and effort it takes for them to get to the dock. After my father died, my 87-year-old mother choose to live in Jaffrey, the childhood hometown of my father, so she could cherish his memories and enjoy the lake property. She now needs this deck to be able to enjoy the water.

- B. Explain how, if the criteria in subparagraph {A} are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

An unnecessary hardship would exist because there is only 600 SF of living area. My mother would like to have as many of her grandchildren visit as possible. We know that we cannot add another bedroom or bathroom to the existing structure, so the family is taking the necessary steps to add to the living area with this proposed deck. This would allow more of us to be able to gather together.

The following email was received and read into the record:

As your next-door neighbors, we want to lend our full support to your intent to build a deck on your property. We cannot speak to any environmental concerns the town may consider. However, we view the aesthetics of adding the deck to be well within your rights as a property owner, and we certainly have no objections.

Good luck in the review meeting this evening. Please let us know of the outcome.

Ann and Lance Hackett (nee Fritz)

Bill and Susan Fritz

John Raleigh, abutter. Mr. Raleigh owns a .18 acre "sliver" of land used for access to the pond that abuts the north side of the subject property. His home is located at 89 McCoy Road. Mr. Raleigh is in favor of the standard setback requirements for all the lakefront properties on Thorndike Pond, in this case 40-foot side and 75-foot wetland/shoreland setbacks. This proposal would impact his use of his "sliver" property due to the close proximity

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of the house and proposed deck. His shoreline is roughly 45 feet, the Austermann shoreline is at least 115 feet. There is much more space on the south side of the Austermann cottage which abuts the Fritz property.

E Brayall asked how big is the existing screened porch /deck and was that included in 600 SF calculation? Mr. Austermann said it was not, it is 240 SF.

W Batchelder asked, would the State get involved if the application was approved? R Deschenes responded yes, they would require a shoreland permit.

6:50 pm - the hearing was continued to the site walk

SITE WALK

The approximate property line between Austermann and Raleigh was identified and measurements were taken from the proposed deck to the shore which was roughly 42 feet. Mr. Raleigh stated the Austermann property used to be wooded before the cabin was built with a buffer between the two properties. He asked why don't they build the deck on the other side of the cabin where there is more room? He is concerned with losing his privacy.

Mr. Austermann noted that he has never seen anyone using the Raleigh property and the only structure on it is a dilapidated shed. There is a house on the Fritz property with a great deal of activity and a clear view of his property and they have no objection to the proposed deck.

The hearing reconvened at 7:35 at the Town Office with final comments from the applicant and abutter.

Mr. Austermann noted that this property has been in the family for more than 100 years. He appreciates the natural beauty of the land and pond. His objective is to build a simple deck off the only door that faces the water.

Mr. Raleigh repeated that he is in favor of adhering to standard setback requirements on all waterfront property on the lake.

Vice Chair Tieger closed the public hearing.

DELIBERATION

J Lucero noted that the hardship, as presented in the application, no longer exists. W Batchelder stated that the hardship is in the land, not the use of the deck.

M Tieger asked the applicant if he had considered any other location for the deck. Mr. Austermann responded that he wanted to enter the house using the existing door that faced the lake. He did not want to add an additional door. E Brayall noted that there are other options to reconfigure the deck outside the setbacks or with less impact that could still utilize the existing door. She asked could the deck be constructed in a manner that would decrease runoff to the lake? E Webster stated that decks that are built higher off the ground or have larger gaps in the boards have less impact on runoff. Mr. Austermann added that he was considering using techno-post to minimize disruption of the soil.

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DECISION

ZBA 22-17 Rosemary Poole, Owner

831 Mountain Rd Map 204 Lot 14.1 Zone: Mountain Zone without town water

Special Exception – The applicant requests a special exception to allow the construction of a porch within the property line setback (Land Use Code, Zoning Ordinance Section VI, 6.7)

On a **motion** by Jevne, seconded by Batchelder to approve the request for a special exception to allow the construction of a porch within the property line setback as presented per testimony given and per plan submitted. (5-0-0)

Plans include: Rosemary Poole special exception request, 204/14.1, dated August 2, 2022.

ZBA 22-18 Chris & Sallie Austermann, Owner

98 Gilson Rd Map 230 Lot 38 Zone: Rural without town water

Variance #1 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the property line setback (Land Use Code, Zoning Ordinance Section VI, 6.1 & VII, 7.2.3)

On a **motion** by Batchelder seconded by Jevne to approve the request for a variance to construct a 12' x 20' deck within the property line setback as presented per testimony given and per plan submitted. (5-0-0)

Variance #2 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the Shoreland Overlay District (Land Use Code, Zoning Ordinance Section XIX, 19.4.2 & 19.6.2)

On a **motion** by Jevne, seconded by Batchelder to deny the variance to allow construction of a 12' x 20' deck within the Shoreland Overlay District as presented per testimony given and per plan submitted. (5-0-0)

Reason for denial - variance #2: The application fails to comply with Land Use Code, Zoning Ordinance 19.6.2.

Variance #3 – The applicant requests a variance to allow the construction of a 12' x 20' deck within the Wetland Conservation District (Land Use Code, Zoning Ordinance Section XX, 20.3 & 20.5.2)

On a **motion** by Batchelder, seconded by Lucero to deny the variance to allow construction of a 12' x 20' deck within the Wetland Conservation District as presented per testimony given and per plan submitted. (5-0-0)

Reason for denial - variance #3: The proposed deck would be an expansion of a non-conforming use towards the wetland district.

Plans include: Austermann Variance Request, Map 230 Lot 38, 98 Gilson Rd, dated August 2, 2022.

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OTHER BUSINESS

ZBA and PB members were invited to participate in a training session at the Jaffrey Fire Station on August 10, 2022 provided by the NH Office of Planning and Development and the NHMA NH Office of Planning and Development and the NHMA.

ADJOURNMENT

The meeting adjourned at 8:23 pm
Submitted:

Attest:



Rebecca Newton, Recording Secretary



Marc Tieger, Vice Chairman, Jaffrey ZBA