

## ZONING BOARD OF ADJUSTMENT

Wednesday, May 27, 2009  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Norma Patten, Pleasant Oberhausen, Linda Couture and Marshall Ford.  
Alternates Absent: Ed Hawkins (E).  
Staff: Candace Daigle and Elaine Murphy.

The chairman opened the meeting at 7p.m.

**Abutters' Hearing – Joseph & Pamela Correia:** Request for a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (26.2') to the highwater mark than allowed (50'). Property is located at 94 Sunset Drive in an "RS" Zone, Tax Lot 107-145, ZBA # 1309Z.

P. Harris gave a history of the lot. It is a preexisting nonconforming lot due to size and frontage. There is a preexisting nonconforming structure encroaching on the water and south west side line. It is a single family residence conforming use. Up to and including the May 31, 2006 assessing inspection there was one 12' x 16' deck on the water side of the structure. On the May 13, 2008 assessing inspection that deck had been removed and the now existing decks constructed.

Mr. Bryan Bailey and Mr. Joseph Correia presented the application.

Mr. Bailey stated that the lot was created in 1958 and developed some time after that. Up to 2006 there was a 16' x 12' or 192 square foot legal nonconforming deck. In 2006 the applicant hired a contractor who didn't get the necessary permit but did the construction. The deck was constructed in three sections. The construction happened in 2006 and was discovered in 2008.

Mr. Bailey addressed the criteria needed to grant a variance. The proposal is for an after-the-fact permit for the removal of a preexisting nonconforming 16' x 12' deck and replacement with a landing and new deck that better meets their needs and provides a balanced architectural style. Granting the variance will not impair or harm the adjacent public waters and will provide increased property value and tax base.

The area variance is needed because of the placement of the existing home and the existing access doors that provide ingress and egress to and from the home. It is the most appropriate place for the access landings and the deck area between the two doors. It is efficient, safe and architecturally

pleasing.

The benefit sought cannot be achieved by some other method because the configuration of any deck other than an exact replacement or reduction in size would require a variance. The existing doors are best serviced by the deck configuration that spans between the doors and affords safe and reasonable space for the entryway and a suitable outside deck.

The spirit of the ordinance is observed because the deck will provide safe and appropriate access to the waterfront and not adversely affect abutting properties or public waters. The property will be used in a consistent manner to what was there and will provide a safer environment for access to the home.

The deck will enhance the visual appearance and monetary value of the property.

L. Couture wanted to know why Mr. Correia didn't get a permit. Mr. Correia stated that he hired a contractor and thought that the contractor would be getting the permit. L. Couture asked if he thought it was okay to build beyond the house and increase the size. Mr. Correia explained that he talked to his contractor about different designs and they came up with this one. The contractor started construction after he and his wife left for the season. Mr. Bailey stated that Mr. Correia did not inquire about a permit but relied on the contractor. He trusted the contractor to utilize the property in the best manner.

Mr. Bailey addressed the need for a Comprehensive Shoreland Protection Permit. He stated the Shoreland Protection Act was enacted post-construction of deck. The new rules are if you grant this variance then Mr. Correia doesn't need a Shoreland Permit but if they don't grant the variance then the new rules would apply. The property is stable at this time. The deck is appropriate for the lot. No injustice or harm to lake has been done. No trees were removed or excavation done.

P. Oberhausen wanted to know how the deck is supported Mr. Correia stated that it is on sona tubes. P. Oberhausen wanted to know if the garage is used for living quarters. Mr. Correia stated it is a two stall garage and has no living quarters at this time. Mr. Bailey stated the area is zoned single family and he would need a variance to use the garage as living quarters. C. Daigle stated that it is not a permitted use in that area. Mr. Correia stated that he has talked to his mother in law about adding on to the garage but she is not interested at this time. He wanted to know if he could do it in the future. C. Daigle stated that it is not a permitted use.

P. Harris stated that it is important to bring new construction into conformance with the regulations. What is there is consistent with other houses in the area.

L. Couture wanted to know if they are putting railings on the deck. Mr. Correia stated they are not. Whatever is there now is all they are doing. The railing would change the aesthetics of the deck. C. Daigle stated that the deck is less than 30" off the ground and railings are not required. She stated that enclosing or roofing the deck is not allowed. Mr. Bailey stated that he has received the comments from the Building Official and he is aware they will have to meet codes for spacing requirements for the sona tubes. The Building Official can inspect the site and Mr. Correia must prove he meets the code.

P. Harris stated that the Conservation Commission has concerns about having the appropriate vegetation to offset the runoff from the deck. Mr. Bailey stated that Mr. Correia is aware nothing can be done towards the water without getting State approval.

Mr. Correia stated that the Town should hold contractors responsible and levy fines if they do not get permits or construct in the wrong area.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**BOARD ACTION – JOSEPH & PAMELA CORREIA:**

**MOTION:** P. Oberhausen moved to grant a Variance of Article 4 of the Wetlands Ordinance to construct a deck closer (26.2') to the highwater mark than allowed (50') as it meets all the criteria.

1. A variance will not decrease surrounding property values because it is an improvement, it will increase the tax base, and it improves the offset.
2. A variance is not contrary to the public interest because there are no objections from abutters.
3. Denial would result in unnecessary hardship to the owner because the deck would have to be removed and rebuilt.
  - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because it was built in 2006.
  - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because of the added expense to the owner.
4. A variance will result in substantial justice being done.
5. A variance will observe the spirit and intent of the ordinance.

Additional conditions:

1. No structure or additions that do not meet setback, except for those approved herein are allowed.
2. Deck to remain open with no roof.

The motion was seconded by N. Patten and carried. (5-0)

**Abutters' Hearing – Lewis and Denise Marden:** Request for a Special Exception of Article 11A.3.d of the Zoning Ordinance to replace a manufactured home closer to the front property line (30.5') than allowed (50') but not closer than existing unit. Property is located at 75 Perkins Road in an "RM" Zone, Tax Lot 121-104, ZBA # 1409Z.

At least three members have viewed the site.

Mr. Lewis Marden presented the application.

Mr. Marden explained that the existing house was 30.5' to the property line and the new house will be 30.5'. The new unit is 2' wider and 8' longer which creates a new 2' x 17' footprint in the setback. He is reducing the square footage in setback because he is removing the deck.

P. Oberhausen wanted to know if he is putting an 8' x 10' deck in the front and the back. Mr. Marden stated that he is. P. Oberhausen wanted to know if the unit would have a concrete foundation. Mr. Marden stated that it will have a slab foundation. Mr. Marden wanted to know if there is going to be upgrades to the water and sewer in the area because his current system is inoperable. In the fall he found leaks in the pipes and they discovered the shut offs were broken. Before he puts the new unit in he wants to fix the water problems. C. Daigle stated that he needs to contact the Water Department on that issue. Mr. Marden had some code questions about the electrical panel on the poles in the area. C. Daigle stated that he needs to see the Building Official about building/electrical code questions.

P. Oberhausen wanted to know what the heat source is going to be. Mr. Marden stated that it may be oil forced hot air or he may upgrade to gas. Cooking will probably be electric. P. Oberhausen stated that the tanks must meet code. The new unit will be an improvement in that area. Mr. Marden agreed stating that the old unit was a manufactured home with additions that needed to go.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

### **BOARD ACTION – LEWIS AND DENISE MARDEN:**

**MOTION:** L. Couture moved to grant a Special Exception of Article 11A.3.d of the Zoning Ordinance to replace a manufactured home closer to the front property line (30.5') than allowed (50') but not closer than existing unit as it meets all the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact. No abutters were present.
5. No nuisance or hazard is involved. The existing unit has been removed and this is an improvement.
6. Adequate and appropriate facilities will be provided. Site is on town water.
7. There is adequate sewage disposal. Site is on town sewer.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional Conditions:

1. All property bounds/existing footprint certified during construction as required.
2. No structures or additions that do not meet setback, except for those approved herein, including the front and back deck, are allowed.

The motion was seconded by N. Patten and carried. (5-0)

**OTHER BUSINESS:**

**BOARD'S ACTION - MINUTES:**

P. Oberhausen stated that in the minutes of April 22<sup>nd</sup> Ms. Drouin stated that there would be a beef cow on site for 12 to 18 months. P. Oberhausen stated that it is not a seasonal cow and would need a shelter. C. Daigle explained that she recorded what Ms. Drouin said and there would be a shelter for any cow or sheep over the winter. P. Oberhausen wanted to know if they would need a permit for the shelter. C. Daigle stated that they would and they would also need one for the pig pen.

**MOTION:** P. Oberhausen made a motion to approve the minutes of April 22, 2009. N. Patten seconded. Carried (5-0)

**STAFF REPORT:**

**LP SETBACKS:**

C. Daigle explained that Board members have received information from the Fire Department and the Code Enforcement Officer concerning LP setbacks and regulations. The Code Enforcement Officer regulates new construction for LP tanks.

**MEMBERS:**

The Board signed a letter of appreciation for Paulette Palombo thanking her for serving on the Zoning Board.

The Board also discussed having staff send a letter to Mr. Ernest Roy, who ran for election, asking him if he is interested in being an alternate member. C. Daigle will write Mr. Roy to see if he is interested in the vacant alternate seat.

**ADJOURNMENT:**

**MOTION:** On a motion by N. Patten, seconded by L. Couture it was voted unanimously to adjourn at 7:51p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy