



Board of Adjustment Regular Meeting

September 26, 2023

Call to order

Mr. Wyn Hardy called the Board of Adjustment regular meeting to order at 1:00 p.m.

I. Roll Call

Board Members Present:

Mr. Wyn Hardy

Mr. Al Joyner

Mr. Melvin Owensby

Mrs. Kimberly Sayles, Alternate (Serving)

Mr. Mark Windfeldt, Alternate (Serving)

Absent:

Mr. Greg Gardner, Chair

Mr. Neil Gurney, Vice Chair

Town Council Members and Town Representatives present:

Michael Williams, Community Development Director

Richard Carpenter, Development and Environmental Review Specialist

Commissioner David DiOrio, Council Liaison

II. Approval of Agenda

The agenda for the September 26, 2023 Board of Adjustment meeting was reviewed.

Mr. Melvin Owensby made a motion to approve agenda, as presented. Mr. Al Joyner seconded. All voted in favor.

III. Approval of Minutes

The minutes from the August 22, 2023 Board meeting were reviewed. **Mrs. Kimberly**

Sayles made a motion to approve the August 22, 2023 meeting minutes, as presented.

Mr. Melvin Owensby seconded and all voted in favor.

IV. Public Comments

There were no comments from the public.

V. **Old Business**

There was no old business to discuss.

VI. **New Business**

Mr. Hardy provided an overview of the quasi-judicial hearing process and rules.

A. ***Variance Request: ZV2023012 regarding 186 Lake Ridge to reduce minimum lake front yard setback to allow replacement of a non-conforming dwelling with compromised foundation.***

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Michael Roberts, Applicant/Property Owner
Linda Roberts, Applicant/Property Owner

There were no challenges for cause or ex-parte communications.

Development and Environmental Review Specialist Richard Carpenter explained that the property owners were replacing their seawall and thought that it would be an optimal time to rebuild their home and asked staff what would be needed. Specialist Carpenter noted that the area is steep, the soil quality is not optimal, and there is an exposed slope. Specialist Carpenter displayed the site plan including the three encroachments. Specialist Carpenter noted that the request is included in the footprint, but not specified in the application. Specialist Carpenter also noted that the lot is narrow, the road was dropped lower at some point, and reiterated that it is on a steep slope. The overall request is to rebuild on the existing footprint. Specialist Carpenter explained that dimensions can be verified with an as-build survey. Mrs. Sayles asked why the applicants are rebuilding and Specialist Carpenter explained that they would like to rebuild due to a foundation issue. Mr. Hardy asked if there should be concern about the existing deck and Specialist Carpenter answered that it is included in the footprint and that he does not think it will be an issue. Specialist Carpenter noted that it is slightly in the trout buffer. Specialist Carpenter noted that he does not have documentation that explains the true state of the existing foundation, but there are indicators that it is decaying. Board members discussed that topography is an issue. Mr. Windfeldt noted that he visited the site and asked if the plan is to extend the wall and it was explained that the wall stops short of what was originally planned because rock was hit but there will be a secondary wall to address the failing slope. Mr. Joyner noted that his understanding is that they Board can either grant the variance or the house will decay into the lake. Specialist Carpenter recommended that the Board review hardship requirements. Mr. Hardy noted that if drawings are accurate, the structure will be a foot or two into the setbacks on each side. Specialist Carpenter noted that the Board can always impose

conditions if the variance is granted. Specialist Carpenter noted that he would not recommend a vegetative screening. It was noted that there were no concerns expressed by neighbors.

Mr. Michael Roberts, applicant, explained that through reiterated that issues were revealed during other projects and that he does not believe that it is safe to build on the existing foundations, which is why he is requesting to rebuild. Mr. Roberts noted that if the existing footprint cannot be used, it would be hard to rebuild any structure. Mr. Roberts explained that there will rebuilding would be an overall improvement. Mr. Windfeldt asked if the contractors believe that a new and stable foundation can be put on the footprint and Mr. Roberts answered that he believes so. Mr. Owensby asked if he plans on going any larger on the square footage and Mr. Roberts answered that he does not plan to increase the square footage more than the footprint shows.

The testimony was closed and deliberation began.

Mrs. Sayles recommended going through all of the hardship questions and determining the outcome based on those. Mr. Windfeldt agreed and expressed that he thinks that the applicant is putting in the work to make the home attainable and that is a positive. Mr. Joyner expressed that he believes that there are legitimate hardships, as well. Mrs. Sayles also stated that she agrees that there are hardships.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

The Board determined that there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

The Board determined that it would not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined that a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined that the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board determined that there are no special circumstances that are the result of the actions of the applicant.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board determined that the variance requested is the minimum necessary for the proposed use of the land, building or structure.

Mr. Windfeldt asked if granting the variance would allow the applicant to begin rebuilding without any additional variance request. Specialist Carpenter answered that there would be no other variances needed and that staff could issue a permit if approved by the Board. Specialist Carpenter noted that all applicants have 6 months to apply for a permit after a board decision is made or the decision is nullified.

Mr. Joyner made a motion to grant Variance Request: ZV2023012 regarding 186 Lake Ridge to reduce minimum lake front yard setback to allow replacement of a non-conforming dwelling with compromised foundation, per the footprint presented. Mr. Windfeldt seconded and all voted in favor.

B. *Variance Request: ZV2023013 regarding 191 Allen Drive to reduce the minimum lake front yard setback to allow the addition of living space to replace an existing non-conforming deck that was destroyed by a falling tree.*

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Louisa Koken, Applicant/Property Owner
Bob Koken, Applicant/Property Owner
Vince Wigman, Architect

There were no challenges for cause or ex-parte communications.

Specialist Carpenter explained that the applicant's deck was destroyed by a fallen tree and they would like to rebuild it, but with the addition of enclosing the deck and making a room but now would like to square off the deck, enclose it, and make a room. Specialist Carpenter displayed the footprint. Specialist Carpenter explained that the reason for the variance request is because squaring off the area would cause a lake front encroachment issue with a reduction of four feet. Staff questioned if this would be a hardship or a personal convenience. Mr. Windfeldt asked if the previous deck was conforming and Specialist Carpenter answered yes. Mr. Owensby asked if granting the variance would create a non-conformity and Specialist Carpenter answered yes. Mrs. Sayles asked if the applicant would create a walkway off of the deck and Specialist Carpenter answered yes.

Mrs. Louisa Koken deferred to architect Vince Wigman. Mr. Wigman explained that the request is for a triangle deck which he estimates to be about 2 ft. x 2 ft. x 4 ft. Mr. Wigman detailed the footprint drawing. Mr. Joyner asked if there was any feedback from neighbors and Specialist Carpenter answered no. Specialist Carpenter noted that trout buffer would not be impacted and added that the property is sloped. Specialist Carpenter noted that he is not sure that slope impacts the project, but the applicant is arguing that shoreline irregularities are causing the encroachment. Mr. Windfeldt expressed that the shoreline can change. It was noted that there is a seawall that marks the shoreline. Mr. Wigman expressed that in the past the lakefront setback could be averaged based on the neighbors and determined that way.

The testimony was closed and deliberation began.

Mr. Owensby expressed concern that the original structure was conforming and granting the variance for the requested new structure would make it non-conforming, which he would like to prevent. Mrs. Sayles noted that it is her understanding that it was conforming when build, but probably would not be if rebuild as it was now. Mr.

Hardy expressed that he questions the changing shoreline as a factor. Mr. Windfeldt noted that the property is very steep and wooded and agreed with Mr. Hardy about the changing shoreline.

Mrs. Sayles noted that the applicant could enclose the structure as was, but it would create a strange edge. Board members discussed and Mr. Hardy re-opened the hearing. Mr. Hardy asked the applicant and architect if it is viable to build in the footprint of the former deck. Mrs. Koken noted that this had considered that, but the contractor advised against it because it will be more difficult. Mr. Wigman noted that it would be more viable with the requested dimensions.

The testimony re-closed.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

The Board determined that shoreline could create extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

The Board determined that granting the variance requested would not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined that a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined that the requested variance would be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board determined that the answer to this question is arguable because of the questioning of the shoreline. Board members discussed. Mrs. Sayles noted that it would be a one-time variance. Mr. Hardy asked if only the footprint of the triangle deck would be approved if the variance is granted and Specialist Carpenter answered if it was approved based on footprint that would be the case. This answer was undetermined.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board determined the variance requested is not the minimum necessary for the proposed use of the land, building or structure

Mrs. Sayles made a motion to grant Variance Request: ZV2023013 regarding 191 Allen Drive to reduce the minimum lake front yard setback to allow the addition of living space to replace an existing non-conforming deck that was destroyed by a falling tree, based on the footprint. Mr. Windfeldt seconded and the motion carried 4-1 with Mr. Owensby voting against the motion.

C. Variance Request: ZV2023014 regarding 118 Havnaers Point to reduce the minimum lake front yard setback to allow the rebuilding of a pre-existing nonconforming deck.

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
John Minor, Applicant

There were no challenges for cause or ex-parte communications.

Specialist Carpenter explained that this pre-existing and nonconforming deck was already permitted and while staff was completing the final soil and erosion test they found that the applicant had built a new deck. Specialist Carpenter added that all other details for the applicant's project were permitted, but the new deck was never disclosed to staff. It was noted that the applicant's engineer David Odom cited that this lack of disclosure was a clerical oversight. Specialist Carpenter noted that the new deck is too

large for him to approve. Specialist Carpenter noted that because of the topography of the property, any structure rather than an access structure would likely require a variance. Specialist Carpenter displayed photos and site plan. It was noted that staff believes that there was a set of stairs linked to the previous deck. Specialist Carpenter explained that the reduction would be from 35' down to 14' with a reduction of 21'. Specialist Carpenter noted that the stairs coming off of the deck are compliant. Specialist Carpenter also noted that the property be shrubbed heavily and the trout buffer should not be impacted. Mrs. Sayles asked if they built the deck double the size of an egress and Specialist Carpenter answered. Mrs. Sayles asked if the steps are in the location that they are because of the retaining wall and Specialist Carpenter answered that it could be for that reason. It was asked if everything was done correctly for the seawalls and Specialist Carpenter answered that everything was being done correctly up until he found the new deck with plans that he did not receive. Mr. Hardy asked what was permitted and Specialist Carpenter answered a retaining wall and land disturbance.

Mr. John Minor, applicant noted that the previous deck and steps were closer to the water and that the French doors were already installed. Mr. Minor added that there were no deck and stars the doors would have a 10 ft. drop. Mr. Minor noted that the old deck was getting dangerous, which was why it was replaced. Mr. Joyner asked for clarification that the former deck was non-conforming and it was answered yes, but since the former desk was fully removed the previously approved non-conformance was no longer grandfathered in. Mr. Joyner asked if staff would have approved plans as they were built if they were issued prior to the new deck being built and Specialist Carpenter answered no. Specialist Carpenter noted that most structures on the land would be non-conforming because of size and topography. Mrs. Sayles expressed that the variance would be necessary for the French doors and the stairs to operate simultaneously.

Mr. Windfeldt asked if staff is opposed to the variance being granted and Specialist Carpenter answered no and noted that many people in that district have this issue and that there could be size and topography hardships. Community Development Director Michael Williams was sworn in. Director Williams noted that the whole property is non-conforming. Director Williams also noted that he does not believe that the engineer, contractor, or applicant intended to send in plans without the deck included.

Board members discussed practicalities of rebuilding the deck differently. Mr. Joyner asked for confirmation that the deck is considered an egress and Specialist Carpenter confirmed.

The testimony was closed and deliberation began.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

The Board determined that there are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

Mr. Windfeldt asked if he can ask Mr. Minor an additional question. Mr. Hardy re-opened testimony. Mr. Windfeldt noted that there was confusion and asked if there is any way that the deck could have been re-built without a variance. It was answered that it could be done without a variance, but it would not likely be practical. Specialist Carpenter noted that due to the height of the dwelling, he is not sure if building code would have approved plans that did not require a variance. Mr. Hardy re-closed the testimony.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

The Board determined that granting the variance requested would not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined that a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined that the requested variance would be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board determined that there are special circumstances that are the result of the actions of the applicant, but there was likely no better alternative than what was done.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board determined that the variance requested is the minimum necessary for the proposed use of the land, building or structure from a practicality standpoint.

Mr. Windfeldt made a motion to grant Variance Request: ZV2023014 regarding 118 Havnaers Point to reduce the minimum lake front yard setback to allow the rebuilding of a pre-existing nonconforming deck. Mr. Joyner seconded and the motion carried 4-1 with Mr. Owensby voting against the motion.

VII. September Department Report

Director Williams provided the Board with a department report for the month of September.

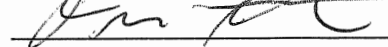
Director Williams noted that the Zoning and Planning Board is still working on alcohol ordinances and that chickens were also being discussed. Director Williams reported that the cell tower is progressing and he still expects it to be built in the 1st quarter of 2024. Director Williams noted that there had been recent issues with garbage and bears and that staff is identifying these issues and holding violators accountable. Director Williams added that staff is also encouraging bear proof bins and to report any issues to Community Development and they can follow-up.

Commissioner DiOrio cautioned that the Board should not re-open deliberations or state reasons as to why someone is voting against a variance. Director Williams added that Mr. Wigman's comments about average setbacks were interpreted differently by staff. Mr. Windfeldt asked why there are no staff recommendations in the meeting packet and Specialist Carpenter explained staff prefers to present facts, let applicants make their case, and allow the board to form their own decision. Board discussed the idea of staff recommendations and it was determined that staff was not required to provide a recommendation, but should make the board aware if they have any strong opinions in regard to a request.


VIII. Adjournment

Mr. Hardy asked for a motion to adjourn the Board of Adjustment regular meeting at 3:05 p.m. Mr. Owensby made motion to adjourn and Mr. Windfeldt seconded. All members voted in favor.

ATTEST:



Olivia Stewman, Town Clerk



Wyn Hardy