

ZONING BOARD OF ADJUSTMENT

MINUTES

October 17, 2023

APPROVED: November 7, 2023

AGENDA: CASES:

23VAR09 – Stebbings - #107-107 – 56 Lakeside Road

23SPX11 – Siteman - #217-095 – 994 North Main Street

23SPX12 – Rybecky - #105-011 – 271 Pikes Point Road

23VAR11 – Rybecky - #105-011 – 271 Pikes Point Road (Administratively Withdrawn)

ATTENDING: Larry Denton, Melody Mansur, Andrew Litz and Steve Carten (Alternate)

ABSENT: Richard LaFlamme (Chair) and Lorraine Bohmiller **Staff:** Donna Sullivan (Land Use Administrative Assistant)

OTHER: **Staff:** Christina Goodwin (Town Administrator), and Joanne Bailey (Land Use Manager)

Applicants, Abutters & Public: Michael Siteman, Dan Stebbings, Ryan McShera, Dave Mermelstein, Susan Nelson and Jeff Lewis, Northpoint Engineering LLC. **Attending via**

Zoom: David Marsh (abutter) and Paul & Laura Rybecky (applicant)

Melody Mansur, as Acting Chair opened the meeting at 6 pm. Mr. Carten was seated as full voting member for this meeting in place of Ms. Bohmiller.

The Acting Chair Mansur alerted the audience and applicants that there was not a full Board seated and explained that each applicant would have the option of continuing their case should they wish to have a full Board present. She cautioned that a 2 – 2 vote would constitute a denial. Applicants Siteman and Stebbings opted to move forward with their cases and Mr. Lewis, representing the Rybecky's asked to retain the option to continue when their case comes up.

MINUTES: The minutes of October 2, 2023, were reviewed. Mr. Carten had a correction to a reference about a 4 foot setback and felt it should read 4 feet from property line. Mr. Denton motioned to approve the minutes as amended. Mr. Litz seconded. The motion carried 4-0-0

NEW BUSINESS:

CASES:

23VAR09 – Stebbings - #107-107 – 56 Lakeside Road

Ms. Bailey read the variance application #23VAR09 into the record requesting a variance for a deck addition and relocation of a set of stairs within the setbacks on his property. She noted all notice postings and stated names of 6 abutters notified. There was one phone call from abutter Williams stating no concerns and no other phone calls or written responses. She stated that Department Heads were notified, and no comments were received.

The Board reviewed the application for determination of application being complete. Mr. Denton asked if there was a plan indicating the setbacks. The applicant shared this information, and it was determined that it was in packet but not showing as shaded as the original. Ms. Mansur asked about calculations for

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impervious coverage and Ms. Goodwin stated that with the Association Approval they were told they were not required to provide this.

Following review, Mr. Denton made a motion to accept application #23VAR09 as complete. Mr. Carten seconded. The motion carried 4-0-0.

Acting Chair Mansur asked Mr. Stebbings to speak to his application for the record. He stated he was looking for a dimensional variance to expand an exterior deck and relocate stairs on the structure situated within the 15-foot setback area in the northeast corner of his Lakeside Village Association property.

Acting Chair Mansur asked the Board if they had any questions before asking applicant to read the criteria questions and responses. Mr. Denton asked the applicant about his approval from the Association and if they were aware of the relocation of stairs and expanded deck area. He stated that he had approval and submitted this.

Mr. Stebbings was asked to read the variance criteria and his responses into the record. Once read, Mr. Denton asked questions about the abutting lot. Mr. Stebbings stated that the abutting lot was part of a different Association. Mr. Litz asked if the stairs area was the only access point for the cottage. Mr. Stebbings stated it was.

With no further questions from the Board, Acting Chair Mansur asked if anyone from the audience wished to speak in favor of the application. Hearing no response, she asked if anyone wished to speak against the application. Hearing no responses, she closed the public hearing portion of the meeting and the Board moved on to deliberate on the application.

Mr. Denton read each of the Criteria questions and the applicant answers individually for the Board to discuss and act on.

#1 - Mr. Denton motioned that the applicant **met** criterion 1 because the project will be in character with the surrounding properties and surrounding area and the applicant has approval from the Associations. Mr. Carten seconded. The motion carried 4-0-0.

#2 - Mr. Denton motioned that the applicant **met** criterion 2 because there is only one location for the deck on the cottage and he has developed a reasonable solution for the stairs issue being on another property. Ms. Mansur seconded. The motion carried 4-0-0.

#3 - Mr. Denton motioned that the applicant **met** criterion 3 because the design and plans for the new deck and stairs will suit the property and location with no impact to others. Mr. Carten seconded. The motion carried 4-0-0.

#4 – Mr. Denton motioned that the applicant **met** criterion 4 because adding the deck would not impact other properties in the area. Ms. Mansur seconded. The motion carried 4-0-0.

#5 A I - Mr. Denton motioned that the applicant **met** criterion 5A(I) because the addition of the deck and relocation of the stairs is the most reasonable location for applicant's use and will not impact any use by the other properties. Mr. Litz seconded. The motion carried 4-0-0.

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23VAR09 – Stebbings - #107-107 – 56 Lakeside Road -continued

#5 A II - Mr. Denton motioned that the applicant **met** criterion 5A(II) because the proposed deck plans are reasonable, these cottages were built before the ordinance went into effect, the location makes sense for access to the cottage and the new stair's location will not impact abutters. Ms. Mansur seconded. The motion carried 4-0-0.

5 B - Ms. Mansur motioned that the applicant **met** criterion 5B because the location of the deck and relocation of the stairs is reasonable to allow enjoyment of the property without impact to abutters. Mr. Denton seconded. The motion carried 4-0-0.

Mr. Denton motioned to grant Variance #23VAR09. Ms. Mansur seconded. The motion carried 4-0-0.

Mr. Stebbings was cautioned about the 30-day appeal period and that the Notice of Decision would be available later in the week.

23SPX11 – Siteman - #217-095 – 994 North Main Street

Ms. Bailey read application #23SPX11 from Michael Siteman into the record requesting use of a storage container for storage of personal items and seasonal items. She noted all notice postings and stated names of 5 abutters notified. There were no phone calls or written responses received. She stated that Department Heads were notified, and no comments were received except for a note to the Board from the Land Use Office regarding this storage container being used and the owners being notified they needed a special exception to have it on the property.

The Board reviewed the application to determine if it was complete. Following review, Mr. Denton motioned to accept the application as complete. Ms. Mansur seconded. The motion carried 4-0-0.

Acting Chair Mansur asked Mr. Siteman to speak to his application. Mr. Siteman stated that the application is in response to a letter from Land Use indicating that use of a shipping storage container requires a special exception. He explained that because they have very little storage within their house or on the property, they purchased a storage container for tools, seasonal items and overflow personal items needing to be stored. He stated that they put it on the property and indicated its location.

Questions followed from the Board asking why they chose a storage container vs. a shed and its visibility. Mr. Siteman stated that affordability and the fact that the container is rodent proof, waterproof and ventilated made sense for them because of what they would be storing. He indicated that it was not visible to neighbors or from the road. Mr. Litz indicated that they drove by the area and with trees losing leaves, it is visible now. Mr. Siteman stated he needs this container so he could comply with whatever conditions the Board might require regarding visibility to allow him to keep the container onsite. He suggested planting evergreens.

Acting Chair Mansur asked Mr. Siteman to read the application criteria and his responses into the record.

Mr. Siteman read the application criteria and his responses.

Additional discussion followed about whether the container is an eyesore due to visibility seasonally and suggestions were made about paint color, fencing, facades, use of natural screening, or moving it so it would not be visible from the neighbors or community. Ms. Goodwin stated that there was opportunity for citing conditions to be applied to any approval.

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Mr. Carten talked about making it aesthetically better with a minimal façade or fencing for the view issue from the road. Mr. Siteman stated he would be happy to work with the Board to screen or make the container look better because he really needs this for storage.

Following discussion, Acting Chair Mansur asked if anyone from the audience would like to speak against the application. Hearing none, Acting Chair Mansur asked if anyone wished to speak in favor of the application. Hearing no other comments from the Board or the audience, she closed the public hearing session.

The Board moved on to deliberation with Mr. Denton reading the criteria questions and responses from the applicant individually so the Board could act on each.

#2 - Mr. Denton motioned that the applicant **met** criterion 2 because the container meets all setbacks and for summer months is not visible due to leaves on trees and it is not in an unreasonable location. Ms. Mansur seconded. The motion carried 4-0-0.

#3 - Mr. Denton motioned that the applicant **met** criterion 3 because the applicant has made an effort to locate this container where it is not visible part of the year, is willing to take steps to conceal this the rest of the year and it does not impact character of the neighborhood. Ms. Mansur seconded. The motion carried 4-0-0.

#4 - Mr. Denton motioned that the applicant **met** criterion 4 because the location of the storage container meets setbacks and it is not near any walkways or public ways. Ms. Mansur seconded. The motion carried 4-0-0.

#5 - Mr. Denton motioned that the applicant **met** criterion 5 because the container does not require any town services. Ms. Mansur seconded. The motion carried 4-0-0.

#6 - Mr. Denton motioned that the applicant **met** criterion 6 because the applicant has the storage unit locked and located where it will not affect public health. Ms. Mansur seconded. The motion carried 4-0-0.

Mr. Denton motioned to grant the Special Exception #23SPX11 with the condition that the applicant takes steps to disguise the metal container with fencing or other façade to prevent view of the container from the neighbors and public with a time limit to do this by end of December 2023. Mr. Litz seconded. The motion carried 4-0-0.

Mr. Siteman was cautioned about the 30-day appeal period and told his Notice of Decision would be available in the Land Use Office later in the week.

23SPX12 – Rybecky - #105-011 – 271 Pikes Point Road

The Rybecky's agent, Jeff Lewis of Northpoint Engineering stated that the applicant would like to continue this case due to a full board not being in attendance, but because an abutter was present who came up from Florida, they wished to ask if they could present the application to ascertain any feedback from the abutter and then have it continued to November meeting.

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There was discussion by the Board and staff with the applicant's agent Mr. Lewis to move this forward in the best way for all. It was decided to open the hearing for presentation and then continue it to November with a re-presentation of the application at that time.

Acting Chair Mansur opened the Hearing for case #23SPX12 and asked Ms. Bailey read the application into the record.

Ms. Bailey read application #23SPX12 from Rybecky Revocable Trust into the record which was requesting the removal and replacement an existing guest house that currently exists within setbacks and will be less non-conforming with setbacks with new structure, but new structure will be about 10 feet higher than existing structure. She noted all notice postings and stated names of 8 abutters notified. There were 4 phone calls received with 3 from one abutter, Ms. Nelson who is present and 1 other from Flatwater Realty, Mr. David Mermelstein. She stated that this call was received earlier in the day and the office returned the call but did not get to speak with him. There were no written responses received. She stated that Department Heads were notified, and no comments were received except for comments to the Board from the Land Use Team regarding no issues with application as presented on the plans for setbacks and height if in same location and indication that a Shoreland Permit was in process but not a part of this application.

Mr. Denton asked for clarification about the drawings referencing lot numbers and other information.

The Board postponed review of the application for completeness. The applicant's agent was asked to present the plans.

Mr. Jeff Lewis stated that the Rybeckys have been working to renovate and improve their property on Pikes Point Road and have come before the Board for a special exception to demolish and replace the existing guest house on the property which will be made less non-conforming than it is presently for setbacks but will have a 10-foot increase in height which will need the special exception.

The goal with the option of presentation of the plans tonight is to give abutter Susan Nelson a chance to voice any concerns and to get feedback before deliberation on this application during continuance.

The Board had questions about the square footage of construction in the setbacks. Mr. Lewis stated the area of the building is going to be bigger, but the area of lot coverage will be smaller due to changes in the driveway and other things. Acting Chair Mansur asked about the maps of Pikes Point Road that show the road coming through the property. Mr. Lewis stated that it seems to be a shared driveway and they are only counting the area that is the Rybecky property.

Acting Chair Mansur asked if anyone in the audience wished to speak. Ms. Susan Nelson spoke about what needs to be documented. She stated that her concerns were that no changes would be made to the road. She stated that she owns 3 lots with two buildings with access from the road area in the middle. She stated that driveways have been changing the original locations of roadway. She cited areas of changes and walls that were built and where the road is supposed to be. She talked about winter conditions on the road and possible collisions due to ice and where the plow needs to plow snow. She says with every change to properties, there seems to be an impact to road access. She stated that winter access is impacted by wind direction and where the snow blows. Her second concern was height and the

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impact of runoff to her property and sun being blocked. She stated she asked the Rybecky's to view the site from her property to understand her concerns.

Acting Chair Mansur stated she wanted to clarify with Ms. Nelson her concerns that the height of the new structure will further impact her land and property with increased runoff, blocked sunlight and will be closer to her property trapping water, leaves and snow. Ms. Nelson agreed and added that the road changes were also a concern. She asked for actual measurement information for the setbacks from her property. She also stated she has documentation that the property line is wrong. Mr. Lewis stated that Rybecky's had a survey.

Ms. Nelson pointed out other areas in the plans that concerned her for water and ice. She would like to know more about the proposed driveway access and if it will remain dirt and why the structure has to be so high.

Mr. Lewis asked to address some of the comments and concerns. He stated that they did have a Shoreland Permit pending indicating that items on the plans around shorefront would fall under this permit process. He stated that for the concerns of property lines, he and the Rybeckys would like to see her records and compare these to their survey. For runoff and sunlight concerns he stated that the building could be at 35 feet height without exception and that they would take these concerns into account to see if there could be other ways to address these.

Mr. Denton asked about consideration for gable ends and gutters being installed. Mr. Lewis stated that there are options to consider addressing these and that the height is what is requested and the runoff concerns could be addressed with other actions. He indicated that the height was due to the current construction styles.

Ms. Nelson asked how the height is measured, asking if it was from the ground up or from another point on the building.

Acting Chair Mansur asked if any others attending in the audience or via Zoom wished to speak in favor or against the application.

Mr. David Marsh, an abutter, stated he had no issue with what was being proposed. He did point out an area with a vehicle parked on the plans and he stated this was an area for emergency vehicles and a turnaround area for trucks servicing the neighborhood with oil or other needs. He stated that from his perspective he was in favor of the proposal, and he felt the Rybeckys had worked hard to consider the environment, neighbors, and other aspects for this project.

Mr. David Mermelstein, an abutter, stated that he was there to listen, and he would be present and would comment if warranted at the continuance.

Acting Chair Mansur asked if any Board members had more questions.

With no other questions and the applicant's expressed wish for a continuance due to lack of a full Board, Acting Chair Mansur motioned to continue the hearing for 23SPX12 to November 7, 2023. Mr. Denton seconded. The motion carried 4-0-0.

Ms. Nelson was asked to submit any other concerns in writing for the continuance if she had any.

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23VAR11 – Rybecky - #105-011 – 271 Pikes Point Road (Administratively Withdrawn)

Ms. Goodwin spoke to the Board about the Administrative withdrawal of case #23VAR11. She updated the Board about this Rybecky variance application being withdrawn due to grandfathering as determined by review of Town Counsel. She read the Town Counsel's communication into the record. The basic summary of the communication was that the grandfathering stays in place because they are making the structure less non-conforming. She stated that a variance would not be needed but the Special Exception would still be necessary for height restrictions.

COMMUNICATIONS: None

OTHER BUSINESS: None

LAND USE:

Ms. Bailey shared information with the Board about Zoning amendments proposed by Planning Board and Conservation Commission that will be finalized for Planning Board approval at its next meeting to be heard at a Public Hearing in November and then to go to the ballot for voters.

There was some discussion of Split Zoning that impacts about 48 properties in Town and Air B & B issues discussed previously. These may be considered for Zoning amendment work next year.

She added that the Office was also working on the 2024 meeting schedules for Boards and Committees.

NEXT MEETING: November 7, 2023

ADJOURNMENT:

With no other business before the Board, Acting Chair Mansur motioned to adjourn at 7:57 pm. Mr. Denton seconded. The motion carried 4-0-0.

Respectfully submitted,

Janet F. Cote
Land Use Associate