

**ZONING BOARD OF ADJUSTMENT  
P.O. BOX 227  
FREEDOM, NH 03836**

Freedom Zoning Board of Adjustment: **September 28, 2021**

Present: Chairman Scott Lees, Vice Chairman Craig Niiler, Karl Ogren, John Krebs, Denny Anderson (A), Jacob Stephen, Zoning Officer Gary Williams, Recording Secretary Stacy Bolduc.

Absent: Jeff Fongemie (A)

Public: Mark McConkey, Victoria McConkey, Jacob McConkey, Eugene Lawnicki, Denise Lawnicki, Meg Hussey Cooper, and other members of the public.

During this meeting the following cases will be heard:

**Application 26-4-21 Eugene W. & Denise M. Lawnicki** *Continued from May 25, 2021*  
**Application 33-38-21 Darlene C. Johnson & John Pisano** *Continued from August 24, 2021*  
**Application 22-24-21 Jeffrey & Patricia Pisani**  
**Application 7-4-21 Tim & Nerine Sullivan**  
**Application 25-4-21 John E. Gaunt**  
**Application 24-13-21 DJH Investments Trust**

Chairman Lees called the meeting to order at 7:00 p.m.

Chairman Lees introduced the Board to the Public.

Notification of this meeting was published in the Conway Daily Sun and posted at the Freedom Town Office and the Freedom Post Office.

**Chairmen Lees made the motion, seconded by Karl to accept the minutes of the August 24, 2021, meeting with the following amendments:**

**Pg. 7 – The first motion should read “John made a motion to not grant a rehearing for the application for Heidi Jones Case # 8-7-21, based on the fact that there was no new information presented, that would have changed the Board’s decision”. Motion seconded by Ogren. Motion passed 4-1-0. Jake abstained due to being absent from the meeting.**

Chairman Lees reviewed the difference between a Special Exception and a Variance and how the meeting will proceed.

**PUBLIC HEARING**

Chairman Lees invited Application # **26-4-21 Eugene W. & Denise Lawnicki. Continued from May 25, 2021.**

Applicant seeks an appeal for the following:

**Article 3, Section 304.6.3 for Erosion Control**

**Article 3, Section 304.6.5.1 Tree cutting within 75 feet of the reference line in the Shorefront District.**

**Article 3, Section 305.6.5.3 for any cutting between 75-300 feet of the reference line.**

**Article, Section 304.6.5.2 Erosion Control less than 100,000 sq. feet.**

Applicant seeks a **Variance from Article 3, Section 304.5 Table** of the Zoning Ordinance to permit the side setback and bathhouse setback from a reference line.

**Map 26 Lot 4, at 380 Pequawket Trail**

**Zone: Ossipee Lake, General Residential**

Mark McConkey, agent with Victoria and Jacob McConkey assisting; came before the board to present this application. Mark reviewed the changes made to the plan since they first presented in May.

Changes:

- The home has been pushed back away from the footpath. The new proposed house sits inside the existing footprint with a breezeway and garage extending in the back of the house. The setbacks are for the southeast right side of the house 14.91' There is a ten-foot deck on the front of the house.
- The deck and the stairs have been pulled back from 21.67' 16.41'.
- The bathhouse was pulled back and went from 37.57' to 38.99'.
- Lot coverage is 19.69%
- Dripline trenches have been added around the proposed home
- Erosion control at the water and midway down the slope. Plan was updated from silt fence to silt sock.

Mark handed out a packet to help explain the viewshed. Chairman Lees asked the board if they wanted to accept new information that did not come in with the package. The board agreed to accept it and copies were handed out to the public to review. Mark went on to explain the primary view from the Lawnicki's waterside of the house and the trees that will stay and the ones that will need to be taken down. The trees that are coming out are in the viewshed of the Lewicki's. When the trees come out there is still enough tree grid to compensate for the trees coming out. The trees will be cut so the stumps and roots stay in the ground to help protect the hillside.

Mark explained that an important feature to the neighbors, the footpath, is a four-foot path that the Lawnicki's moved their house back from to preserve. Mark read the five facts to support this request into the record. Only question one of the five facts was included in the packet. Mark explained that the Lawnicki's have contracted with an architectural firm and an engineer to help with the reconstruction of the deck and stairs and address the concerns for stabilizing the hillside.

A letter from Freedom Conservation was read into the record. The bathhouse is an enclosure for changing and will not have any plumbing. The plan will be updated to relabel the bathhouse. The reconfigured driveway was discussed. Craig does not support where the reconfigured driveway is located and suggested putting it in the front of the garage. Krebs also agreed the driveway will not work the way it is configured. The driveway will need to be bigger if they want to keep the driveway where it is and the proposed lot coverage is tight. There are no easements that Mark is aware of. Two letters were sent in opposition to the proposed project. There were no abutters in favor.

Chairman Lees asked if there were any abutter not in favor of the project.

**Joanne Perwak** read a letter on behalf of the Hussey Family Realty Trust that was submitted in opposition to the application (see attached). She commented that she did not get a chance to review the five facts because they were not in the packet. Lees stated they will be added to the file to be available to the public for next month's meeting. Joanne read her letter in opposition to the proposed project.

**Beverly Jones Heydinger** on behalf of The View at Ossipee Family LLC and Donald and Ken Jones also read a letter in opposition to the application outlining their concerns ( see attached for details). Some concerns discussed:

- The five questions were not available to view.
- The septic is not on the plan.
- The stairs are not being built in the same place; they are in the general area but they are not in the same place.
- The large trees at the top of the bank may not need to be removed.
- Excavation will have to be done and disturb the bank.
- The driveway will have a negative impact on the neighbors.

**There was no public in favor of the project.**

**Ted Hennessy**- expressed his concern for the disturbance to the bank and would like a barrier across the width of the bank. Water does not channel down it unless it is directed from above. He would like to see a proposal that will limit the amount of construction disturbance.

Mark confirmed the stairs will be open plank and addressed Hussey's concerns about the tree cutting. He stated there are a limited number of trees being cut on the property and this whole process must go through the State Shoreland Protection application process. Still, there is an aggressive woodland buffer around the home and the stairs that lead below. The stairs will be open wood. Mark reiterated that there has been a significant compromise with this application from what was first proposed in May. They will install a new septic system when they proceed, and it will sit at the back of the property. The two grids in question meet the town zoning requirements for tree count. The driveway is placed where the architect wants the driveway placed. The tree cutting that is being proposed will benefit the Hussey view. Finally, Mark stated he finds it ironic that the View at Ossipee Family LLC home extended over the property line and the Lawnicki's consented to the property line adjustment. Additionally, they have added a roof that added height to their home without objection from the Lawnicki's. Mark also pointed out the View at Ossipee Family LLC septic system when it was submitted did not take in the true property line adjustment

There was a discussion on whether handouts should be allowed at this point. Craig does not support more new information and stated it is not helpful to be bombarded by information and there is a lot going on with this application. John supports allowing the information because it is in response to abutters letters. The information regarding the septic was allowed. Craig said everyone needs a month to consider the five questions that were not in the packet and the answer to one of questions that were in the packet is not consistent with the one question in the packet.

Chairman Lees asked that the septic be added to the plan and show the trees that will need to be cut. The board asked that the following be addressed for next month's meeting:

- The septic needs to be on the plan and trees that will be cut.
- Ask the architect to reconfigure the driveway so it works for everyone
- The deck at the bottom near the lake needs to be decreased in size.
- Tree grids on the plan
- Well labels
- Silk fence from lot line to lot line below the existing footpath
- Correct the spelling of Lawnicki on the proposed plan at the bottom of the page.
- The stairs on post with hand-dug footings
- Show gable ends on the house
- Downsize the bathhouse and relabel it
- There are trees on the plan that will need to come out
- Use a silk sock, not a fence.

John reminded the public the board works within the confines of the Town Zoning ordinances and if trees to be cut do not exceed what is allowed within a grid, then they can cut the trees. John stated they can even move the house ahead closer to the lake if they wanted to.

Craig was disappointed that the abutters were not fully aware of what was coming before the board tonight.

Abutters who are opposed:

Joanne Purwak voiced her opposition to the location of the proposed house.

**Chairman Lees made a motion to continue Application 26-4-21 Eugene and Denise Lawnicki until October 26, 2021, motion seconded by Ogren; Motion passed 5-0-0.**

**Chairman Lees read a letter to continue Application #30-12-21 Richard J. & Debra L. Strott, until October 26, 2021.**

Ogren asked how old the application is? Mark responded four months.

Mark requested that the application be withdrawn. He will submit a new application and plan. The abutters will be noticed again.

**Chairman Lees made a motion to accept the request without prejudice the withdrawal of the application, motion seconded by Ogren; Motion passed 5-0-0.**

Chairman Lees invited Application 33-38-21 Darlene & John Pisano to approach the board. *Continued from August 24, 2021, applicant seeks the following:*

**Special Exceptions under Article 3 Section 304.6.5.1** tree cutting within 75' of the reference line. **Special Exception under Article 3 Section 304.6.3** for erosion control or cutting and removal of trees.

Applicant also seeks the following **Variances:**

**Article 3 Section 304.5** Variance sideline and rear (water) setbacks.

**Article 3 Section 305.6.5.3** Variance for tree cutting on a lot greater than 12.5% grade

**Map 33 Lot 38, at 169 East Danforth Rd.**

**Zone: Danforth Pond Gen Res**

Mark McConkey (agent) with Victoria and Jacob McConkey assisting; reviewed the proposed conditions map with all the proposed tree cutting and tree plantings. He reviewed the proposed retaining wall spot elevations. The proposed well will go within grid 7. Dripline trenches were added and finished contours. The drainpipe was removed from the plan because they didn't need one. How the back of the wall is being used for stormwater control is shown on the 11x17.

Chairman Lees would like to see finish grades.

There were two letters. One from Michel J. Cloutier outlining his concerns and another from Bruce and June Howlett.

Chairman Lees asked if there were any abutters present to speak.

**Bruce Howlett-** is in favor of the application with the following adjustments to the plan (see handout):

- Pulling the leach field forward to save a couple more trees.
- Lower the headwall to 3' on the riverside.
- Move the retaining wall to the existing grade of 90 to save oak trees and avoid unretained fill area.
- Dig the existing drainage swale and fill it in with stone when doing the retaining wall to intercept the water runoff from the road to protect Danforth Pond.

**There was no public to speak to the application.**

**The board would like to see on the plan:**

- The change in contours for the wall from existing to proposed.
- Finish slab and floor elevations for house & garage
- Top of the wall to the garage elevations
- Wall steps

Jacob asked if the board would be ok with taking the tree- cutting plan and adding the dimensions requested to that plan and on the grading, plan take off the trees and the dimensions so he can show all the cutting. Craig commented he would like to see the point of closest infringement on each side. (Maybe not all of them just the worst of the infringements).

**Chairman Lees made a motion to continue Application # 33-38-21 until October 26, 2021, motion seconded by Karl; Motion passed 5-0-0.**

**Chairman Lees invited Application # 22-24-21 Jeffrey & Patricia Pisani, to come before the board.**

Applicant wishes to build a garage and retaining wall that does not meet setbacks. Applicant seeks the following variance.

**Table 304.2 a Variance from Article 3 Section 310.1.6:** Total footprint of all structures exceeds 15%.

**Map 22 Lot 24, at 37 Intervale Avenue**

**Zone: General Residential**

Mark McConkey (agent) with Victoria and Jacob McConkey assisting; presented this application to the board.

*Chairman Scott Lees recused himself and stepped away from the table for this application because he is an abutter and Denny Anderson (A) came to the table as a voting member.*

The existing conditions map was explained first. The existing 2-bedroom house is non-conforming on the right and front. The temporary existing rhino garage is 4.67 from the sideline on the left side and is non-conforming. There is above ground propane to the right of the house there is also an existing shed behind the rhino garage. The total existing structure's lot coverage is 2,176.00 sq. or 14.69%. the proposed conditions include a 757 sq.' garage with a 4" overhang and add a retaining wall at the back of the garage and in front of the garage to the left to sure up the foundation and keep sediment and rock from falling into the neighbor's yard to the left. The proposed garage 4.86' from the sideline setback, the rear retaining wall at its closest point is 4.45 from the sideline setback. The wall will be poured concrete. The most affected by the proposed project would be Scott & Patricia Peters and they have submitted a letter in favor of the project. Craig asked if the board had any questions.

Craig confirmed that the proposed structures lot coverage is 16.45% existing lot coverage is 14.69%. The size of the garage was discussed. Denny stated the garage is too big for the lot and there is a garage under the house currently and a deck.

There was no public comment.

Mark stated he would like to continue the application. Niiler stated he would second a motion to deny the application. Krebs stated it has to be a whole new application and started to make a motion to deny the application when Mark interjected, he wants to withdraw the application.

**Craig made a motion to accept Mark's request to withdraw the application without prejudice, motion seconded by Ogren; Motion passed 5-0-0.**

**There was a five-minute recess 9:13 p.m.- 9:17 p.m.**

**Chairman Lees came back to the table as a voting member.**

**Chairman Lees invited Application # 7-4-21 Nerine & Tim Sullivan**

**John Krebs recused himself and stepped away from the table and Denny Anderson (A) came back to the table as a voting member.**

Applicant is seeking a **Special Exception under Article 3, Section 309.1, and Article 3, Section, 309.2** to house a Tractor Tractor in a barn they intend to build at their home located at Sherwood Forest, West Bay Rd.

**Map 7 Lot 4, at Sherwood Forest, West Bay Rd.**

**Zone: General Residential.**

Nerine & Tim Sullivan and Mark McConkey came to the table to present this application. Nerine explained where on the lot they want to build the barn and assured the board that they just want to park the truck in the barn and will be doing any business at the house. She stated she has noticed commercial vehicles parked in people's yards when driving around town and that is all they are asking to do. You would not be able to see the barn from the road. Mark McConkey explained that the Sullivans came to him to do some work but at the time their work load was too busy. Nerine put the application together. He pointed out that this is an 18-acre lot and they do not want to subdivide it and they want to keep the tree coverage that is there. Tim is a commercial hauler that hauls wood products and wants to put up a barn to park the truck in. The house driveway will be off West Bay Rd. and the barn driveway will be coming off Ossipee Lake Rd. all buildings will meet zoning setbacks. Tim is willing to honor the road bans when they are on the road.

Chairman Lees asked if the trailer would come back empty, Tim responded there are times when the trailer could have product on it coming back to the barn. The GVW of the truck and the trailer is 35,000. Nerine presented pictures of various work trucks parked in driveways around town.

There were no abutters present in favor of the proposed barn.

Abutters opposed:

**Brian Taylor-** questioned if Sherwood Forest LLC still owns the property. Nerine said yes, Sherwood Forest owns it but they have a purchase and sales agreement. Mr. Taylor questioned does the special exception go with the owner or the property. Chairman Lees responded the property. Mr. Taylor questioned what happens if somebody else owns the property and they want to haul fuel instead of wood. the length of the trailer was discussed and being able to pull out of the driveway. Mr. Taylor does not support the special exception and cited safety concerns for crossing the road and site lines.

**Paul Tung-** Stated that he was not offered an opportunity to view the application and did not know what questions to ask.

**Jean Marshall-** Stated she was also looking for an application to review and was not aware that she could come into the office to review the application. *(The recorder did not pick up all of Jean's comments).*

A member of the public asked if they don't get the Special Exception what kind of development would they be thinking about putting in there. Chairman Lees responded we don't know and that is up to them to decide. Karl explained further if they do not meet the requirements of a subdivision because they have to move closer to a setback or sideline then they would have to come back to the board.

Chairman Lees asked if there was anyone from the public who wanted to speak.

**Roberta McCarthy** – voiced her concern for the environmental impact on the Square Brook area. The land abuts a wetland, and many people are concerned for the Berry Bay area.

**Linda Mailhot**- Does not support the application. Read a letter see attached.

**Susan Marks**- voiced concern about putting a commercial vehicle in a residential zone and that the Special Exception will follow the property and what that would mean for the future of the property.

**John Krebs**- Does not support the application. With the aid of a handout, John voiced some of the following concerns for a commercial truck in a residential area. (See attached).

- The applicant should be requesting a variance 309.2.11 states no more than three commercial vehicles may be parked at the site. Vehicles must be less than 12,000 GVW.
- Two abutters were not notified Tax map 36 Lot 2 and Tax Map 40 lot 1-4
- Road damage is a big concern with all the money the Town has spent to reconstruct Ossipee Lake Rd.
- Safety for the truck to pull out safely. The driveway is on the inside of a curve with limited visibility.
- Aesthetics
- Access and egress to the site.  
(Please see attached for a complete list of concerns in detail).

Chairman Lees confirmed there is a signed letter from Richard Woodstein the agent for Sherwood Forest LLC of West Bay Rd Freedom NH in the packet.

Chairman Lees asked where the board for any comments or questions.

Craig responded to the applicant's submission of photos of other heavy equipment around town stating this has not been allowed in the past in the General Residential area. The Moulton Rd. area is a different zone (Rural Residential) and a different situation. There was a brief conversation around commercial trucks being parked outside the zoning code. Chairman Lees responded that we all know that there are things happening outside the zoning code but, unless someone reports it to the Zoning Officer or Selectmen, there is nothing we can do about it.

Chairman Lees reiterated that historically this board has not approved these types of applications because of the road and use of a Residential area. Denny agreed.

Nerine commented historically you have not allowed this but you know it's going on.

Mark commented that he feels the Special Exception was appropriate for this application and the town could put special conditions on the approval. Signage could be purchased to make people aware of what is up ahead.

Roberta McCarthy- wanted it on the record about protecting the wetlands in the Square Brook area.

Chairman Lees explained to the applicant if the Board votes it's looking like it may not pass and gave them the option of withdrawing the application or going through the voting process. If the board votes no then that piece of ground cannot come back before this board without it being a substantially different application.

The applicant chose to withdraw the application without prejudice.

**Chairman Lees made a motion to accept the withdrawal without prejudice, motion seconded by Ogren; Motion passed 5-0-0.**

**Chairman Lees invited Application # 25-4-21 John E. Gaunt**

Applicant wishes to replace a non-conforming garage with a new garage maintaining the 35.0' setback from the right of way of Pauli Point Rd. (a private rd.) and increase the height of the proposed structure from the existing non-conforming structure. **Applicant seeks a variance under Article 3, Section 304.2 and Article 9, Section 906.3.**

**Map 25 Lot 4, at 66 Pauli Point Rd.**

**Zone: Ossipee Lake Gen Res**

**John recused himself and did not return to the table as a voting member. Denny sat in as a voting member for the next two applications.**

Allan Fall agent and John Gaunt came before the board to present this application. The board had no problems with this application.

**Questions from the abutters or public:**

None.

The board elected to review the Variance worksheet for Article 3, Section 304.2 and Article 9, Section 906.3

The ZBA has the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

1. The variance will not be contrary to the public interest. **Carried 5-0.**
2. The spirit of the ordinance is observed if the variance is granted. **Carried 5-0.**
3. Substantial justice is done by granting the variance. **Carried 5-0.**
4. The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
  - A. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
    - i. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and specific application of that provision to the property, and **Motion Carried 5-0.**
    - (ii) The proposed use is a reasonable one. **Motion carried 5-0.**

**Conditions:**

1. **Per the Plan dated 9/2/2021**

**Findings of Facts:**

- 1. New garage maintains the existing non-conforming front setback.**
- 2. Maximizes disturbance from the lake.**
- 3. No ground disturbance within 75'**

**Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested Variance from Articles 3, and Article 9 Sections 304.5 and Section 906.3 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

Chairman Lees explained the 30- day appeal period and the Variance expires 9/28/23

**Chairman Lees invited Application # 24-13-21 DJH Investments Trust**

Applicant seeks a **Special Exception from Article 3, Section 304.6.3 for Erosion Control** and a **Variance from Article 3 Section Table 304.5** for the construction of a 60" by 72" bulkhead on the previously approved structure within 75-foot waterfront setback.

**Map 24 Lot 13 at, 173 Haverhill Rd.**

**Zone: General Residential Shorefront Overlay**

Jim Rine's agent presented this application. The board found no issues with the application and elected to vote. This plan will become the plan of record.

The board elected to review the Special Exception worksheet for Article 3, Section Table 304.6.3

- |                              |                              |
|------------------------------|------------------------------|
| <b>A- 5-0 motion carried</b> | <b>J- 5-0 motion carried</b> |
| <b>C- 5-0 motion carried</b> | <b>K- 5-0 motion carried</b> |
| <b>H- 5-0 motion carried</b> | <b>L- 5-0 motion carried</b> |

**Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested Special Exception from Article 3, Section Table 304.5 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

**Conditions:**

- 1. Per the Plan titled Zoning Board of Adjustment Plan for DJH Investment Trust dated 9/10/2021.**

**Finding of Facts:**

- 1. Bulkhead is required by code to access basement.**

The ZBA has the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

- 1. The variance will not be contrary to the public interest. Carried 5-0.**
- 2. The spirit of the ordinance is observed if the variance is granted. Carried 5-0.**
- 3. Substantial justice is done by granting the variance. Carried 5-0.**

6. The value of surrounding properties is not diminished if the variance is granted. **Carried 5-0.**
7. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
  - A. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
    - ii. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and specific application of that provision to the property, and **Motion Carried 5-0.**
      - (ii) The proposed use is a reasonable one. **Motion carried 5-0.**

**Conditions:**

2. **Per the Plan titled Zoning Board of Adjustment Plan for DJH Investment Trust dated 9/10/2021.**

**Finding of Facts:**

2. **Bulkhead is required by code to access basement.**

**Motion: Chairman Lees made a motion that, based on the foregoing findings of fact, the requested Variance from Articles 3 Sections Table 304.5 of the Town of Freedom Zoning Ordinance be granted with conditions. Karl seconded the motion; Motion carried 5-0.**

Chairman Lees explained the 30- day appeal period and the Special Exception expires

**Miscellaneous**

Chairman Lees asked the board for input for the joint meeting with the Planning Board on October 21, 2021, and what they would like to discuss. It was agreed to discuss tree cutting, septic systems, Article 3 Section 309, getting out of the Erosion Control business.

There was no mail.

There being no new business to come before the board, the Motion by Chairman Lees, seconded by Karl that this meeting adjourns; Motion passed unanimously.

The meeting adjourned at 10:37 p.m.

Respectfully Submitted,  
Stacy Bolduc,  
Recording Secretary

*Entered*

September 24, 2021

Zoning Board of Adjustment  
33 Old Portland Road  
Freedom, NH 03836  
freedomzoning@gmail.com

Re: Application of Eugene and Denise Lawnicki, Case 26-4-21  
At 380 Pequawket Trail, Freedom, N.H.  
September 28, 2021 Agenda

To the Zoning Board of Adjustment:

I represent the abutters to the north of the Lawnicki property, The View at Ossipee Family, LLC, owned by my brothers and me.

We oppose the Lawnickis' application, and ask the Zoning Board to deny the Lawnickis' request for variances for the following reasons:

**Septic System:** The Lawnickis have stated on their application that they will install a new septic system, and that the application is "pending." The Lawnickis have not shown it on their application, as required by the Zoning Board (Plot Plan Guidelines, #5), and we have not been given a copy, despite repeated requests. Thus, we do not have information about its placement on the site or the trees that will be removed to install it.

**Failure to Complete Section 3, Appeal for Variance.** Section 3 requests that the applicant provide facts to show that the variance is in the public interest, within the spirit of the ordinance, would do substantial justice, would not diminish the values of the surrounding properties and that, owing to special conditions, denial would result in unnecessary hardship. Only the public interest and the spirit factors are addressed at all. Moreover, the response to the first factor is pulled from the application filed in May and much of it no longer has any relevance. We contend that they have failed to meet this requirement, and since they have not, we cannot rebut any assertions that they might make.

**Tree Cutting:** There are two areas of tree cutting that are of special concern. Grid #5 shows that all of the trees off the back half of our house will be removed, apparently to place a reconfigured driveway that will be largely within the 30 foot setback. A photo showing the trees they propose to remove in this area is attached. It is not clear why the driveway couldn't be moved away from our property or the garage doors open toward Pequawket Trail to minimize this intrusion and tree removal. Because the Lawnicki property sits above ours, and the lot line is so close to our house, removing the trees and surrounding vegetation is of particular concern.

In addition, Grid #3 shows that the Lawnickis propose to cut several large pines and spruce on the lake side of the path down the bank, including 30", 20", 13" and 10" pines and one 12" and two 8" spruces, and some smaller trees. None of these trees must be removed to allow the Lawnickis' proposed construction and removing them will risk harming the fragile, sandy bank. In addition removal of so many trees will significantly alter the character of the site, and the view of the hillside from the lake.

**Moving the House Forward:** The Lawnickis propose moving the house 10 feet forward from the existing foundation. This will significantly narrow the existing path, and excavation to construct the foundation will have an additional impact. Since May, we have consistently asked that they consider moving the front of the structure back to the current footprint. They have ample space to do so, and have not given us any reason why that is not feasible.

Last May, the Lawnickis filed an application to tear down their lake cabin and build a year-round home on the lot. We filed our objections to their proposal at that time, and offered to meet with them to discuss their plans. Following the May meeting, the Lawnickis told us that they had not seen the plan filed in May before it was filed, that they did not intend to build the stairs and home as filed, but had been told that "something" should be filed to start the conversation with the Zoning Board.

Between July 3 and September 9, we had a few discussions with the Lawnickis. Initially they told us that they were getting soil tests and an estimate for the cost of the stairs to the beach and would get a house design thereafter. During those conversations, we consistently requested the drawings of the structure they intended to build, the Shoreline Protection Plan, the results of the soil testing, and septic system plan. We expressed concerns about their encroachment on the edge of the bank, tree-cutting, lighting and drainage. In August, they told us that they planned to build 10 feet in front of the existing camp, and provided some additional detail, but told us that they didn't have any drawings. At no time did they supply any drawings to us or provide any of the other information we requested.

In short, we have been unable to have an open discussion with the Lawnickis because they did not provide us with plans or explain why the house and driveway locations were, apparently, non-negotiable. This is unfortunate. We would like to reach a compromise that gives them a new home that they can enjoy, maintains our shared interest in the beauty of this section of the lake, and fully complies with the Town's procedures.

Because the Lawnickis have not complied with the Town's zoning requirements, their request for variances should be denied. I plan to attend the meeting of the Zoning Board of Adjustment on September 28, and will be happy to respond to any questions you may have.

Sincerely,  
Beverly Jones Heydinger  
*On behalf of The View At Ossipee Family LLC and  
Donald Jones and Ken Jones*

*Entered*

**Submittal to the Freedom Zoning Board of Adjustment Regarding Case 26-4-21, Eugene W. and Denise M. Lawnicki, September, 21, 2021 meeting**

**From the Hussey Family Realty Trust, 382 Pequawket Trail – John Hussey Jr., Joanne Perwak, Nancy Hussey, Lisbeth Hussey, Meg Cooper, and Philip Hussey**

**Below are our comments on the ZBA Application**

**Summary**

We oppose the Lawnicki's application and ask the Zoning Board to deny the request for variances for two primary reasons. The proposed conditions move the house forward about 11' from the position of the current house. Although the height of the new structure is not shown on the drawing as is required, we expect it will be much higher than the current structure. Moving the structure forward and increasing the height will significantly impact our view to the right and impact the value of our property.

The houses along the high bluff originally were all built with the fronts parallel to and about 25' back from the top of the bank. When we built our house in 2003, we proposed to have the front along that same line. The Lawnickis objected, feeling that our houses would be too close. As an accommodation, we moved our house 20' back. That change impacted our view substantially, but we accepted it. Now they want to build their new house about 11' forward of the existing house while increasing the height, both of which would reduce our view (and property value) further.

**Five Questions**

The revised application is not complete, as it does not include answers to several of the five questions. Our responses are based on the information we have.

**Granting the variances will not be contrary to the public interest**

The answer to this question is the only complete answer in the application, yet it contains information that conflicts with the rest of the application, such as reference to the patio and retaining walls. Nevertheless, it concludes that granting the variance will not be contrary to the public interest.

However, granting the variances is contrary to the public interest, as evidenced by the objections raised by residents of the Bluffs. Views from both of the closest abutters will be impacted and there is not enough mature tree cover to provide shielding and some of the existing tree cover will be removed. In addition, the house will be located right at the edge of a communal path that has been in existence for almost 100 years, narrowing the path substantially in this area. Note that the path is shown in the figures as a consistent four-foot width. It is much wider than this in many locations.

The Shoreland and Water Quality Protection Act is intended to assure a natural woodland buffer in areas adjoining public waters to intercept surface runoff, wastewater, subsurface flow, etc. The proposal requests setback variances to the lake for the bath house, stairs and deck. These setbacks are important, and granting the variances requested will diminish the woodland buffer and provide additional avenues for surface runoff from the new impervious surfaces located on the bank. Four large trees are proposed for removal right at the top of the bank in front of the Lawnicki's proposed house. The removal of these trees will make the bank very susceptible to erosion. No stormwater plan or system is identified for

implementation after the construction is complete. As a result, the project as proposed is contrary to the public interest, even beyond the nearby residents.

**If the Variances were granted, the spirit of the ordinance would be observed (Not answered in the application)**

Granting the variance is not in the spirit of the ordinance as it would allow substantial development within sensitive areas and on a steep bank where disturbance is even less desirable. The location and scale of the project are inconsistent with neighboring structures.

**Granting the variances would do substantial justice. (Not answered in the application)**

Loss to the applicants if the variances are not granted is not substantial. If the front of the new structure (facing the lake) was the same as the existing house the esthetics and value of the Lawnicki's property would not be significantly impacted, while granting of the variances will have significant impact on the abutters and the community of the Bluffs.

**If the variances were granted, the values of the surrounding properties would not be diminished. (Not answered in the application) (Not answered in the application)**

We believe the diminished site views and the overwhelming nature of the nearby house/garage structure will substantially affect the value of our property.

**Unnecessary Hardship. (Partially answered in the application)**

The application indicates that "the proposed building envelope is a compromise, is respectful of the neighbor's privacy, and preserves a walking trail between properties as most of the outside living will be below grade and out of their primary view". This statement is incorrect and misleading. The proposed building is not a compromise. No compromise has been reached, discussed, or agreed to. The plan is not respectful of the neighbor's privacy as it proposed to further impose on our view and privacy by moving the house forward. It preserves some of the walking path, but severely diminishes the open access the existing path provides. The statement regarding outside living being below grade is clearly inaccurate.

In fact, there are no special conditions of the Lawnicki property that distinguish it from other properties in the area. The Lawnicki property is similar to all the properties along the Bluffs. The property can be used in conformance with the ordinance and in a manner similar to other properties in the area. The unique setting of the property is its location as a waterfront lot. However, that unique setting can be enjoyed from the location of the existing house, extending further back toward the road as necessary. The existing location of the house provides a reasonable use of the property, and their lot extending towards the road provides opportunities for expansion of the house as needed.

*Entered*

# Freedom Conservation Commission

Freedom, New Hampshire 03836

September 27, 2021

Town of Freedom  
Zoning Board of Adjustment  
Freedom, NH 03836  
Attention: Scott Lees, Chairman

**RE: Case 26-4-21 Eugene W. & Denise M. Lawnicki**

The Freedom Conservation Commission has received and reviewed a copy of the referenced application during our last meeting held on September 21, 2021. Upon a detailed review of the application(s) we have voted to communicate the following feedback and requests.

1. The application was noted to be revised from previous submissions.
2. The newly proposed tree cutting plan is an improvement over prior plans and is much more consistent with conservation efforts of this sloped, shorefront lot.
3. The drip line trenches detailed in the plan will help to contain stormwater run-off from the house, garage and breezeway and we are pleased to see them now included.
4. The slope toward the lake is quite steep and we would like to be sure that run-off both during construction and after it is controlled to the greatest extent possible. We recommend extending the proposed silt-fencing to the extents of the lot side to side as well as installing an additional fence between the house and the first deck structure at the top of the slope.
5. We observed that the multiple decks and bath house structures have increased in size from the current conditions. Our opinion is that these structures will contribute to run-off on an aggressive slope and should have management of the run-off at these locations as well.
6. The top-most deck nearest the house is believed to be in a vulnerable area and we urge the applicant to consider exploring methods of building the deck without removing the large trees in this area.

Monday, September 27, 2021

Page 1 of 2



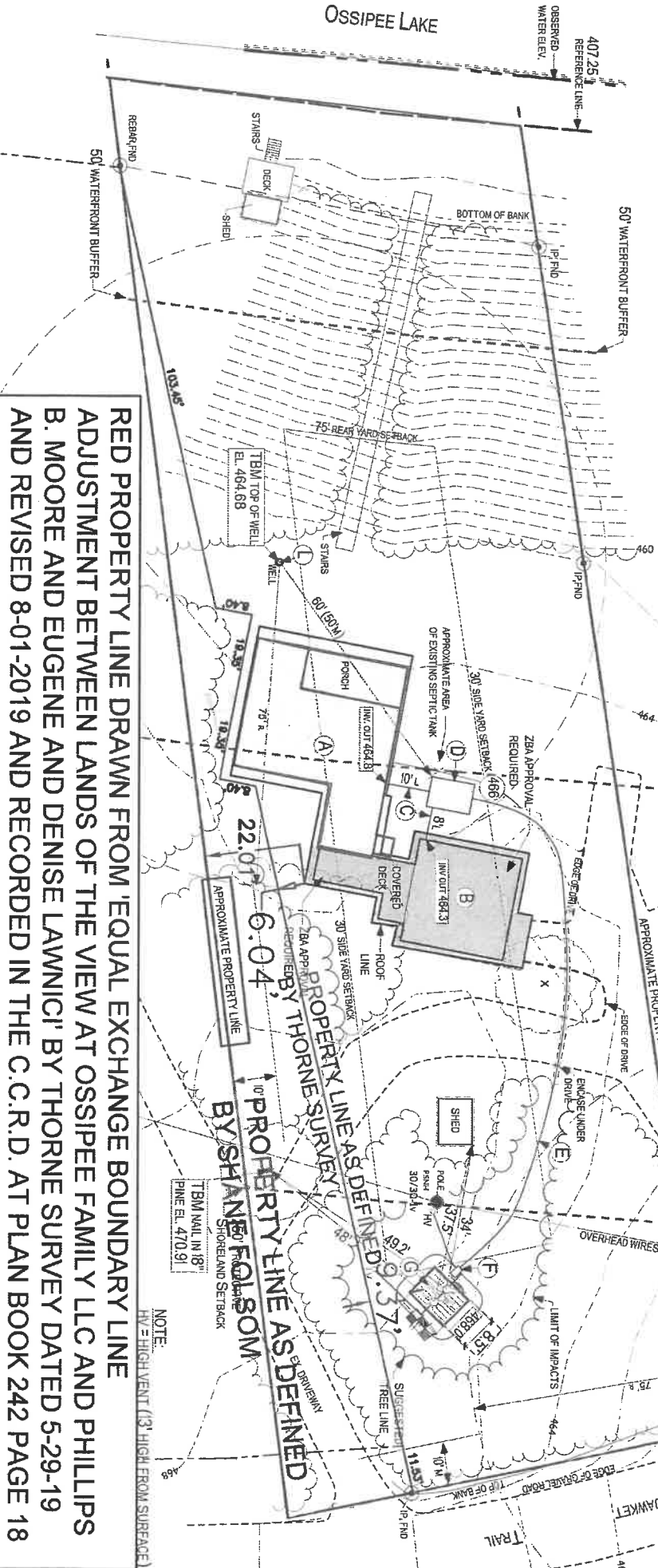
Taken August 2021, showing the trees to be cut for the reconfigured driveway and what is shown on the Existing Conditions as the existing driveway extension.



- (A) EXISTING HOUSE  
FIRST FLOOR EL. 466.27  
INV. OUT 464.8 "TIE INTO EX. PLUMBING"  
NO DRAINS EXISTING
- (B) PROPOSED ADDITION  
SLAB EL. 467.3  
TOP OF FOUNDATION EL. 468.0  
INV. OUT 464.3 (UNDER SLAB)  
NO DRAINS
- (C) 4" SDR 26 OR EQUAL  
S=0.021 FT(MIN)
- (D) SEPTIC TANK/PUMP CHAMBER  
1250/350 GALLON TWO COMPARTMENT CONCRETE  
INV. IN 464.0  
INV. OUT 463.7  
PROVIDE ACCESS, COVER AND BAFFLES, SEE NOTES 3+4  
PROVIDE 1/4" DRAINBACK AND MUSHROOM VENT IN PUMP CHAMBER

# THE VIEW AT OSSISPEE LAKE SEPTIC DESIGN OVERLAY

**DRAWN ON NHDES APPROVED  
SEPTIC DESIGN #eCA2019040924 FOR  
THE VIEW AT OSSISPEE LAKE  
C/O KEN JONES DATED APRIL 9, 2019**



**RED PROPERTY LINE DRAWN FROM 'EQUAL EXCHANGE BOUNDARY LINE  
ADJUSTMENT BETWEEN LANDS OF THE VIEW AT OSSISPEE FAMILY LLC AND PHILLIPS  
B. MOORE AND EUGENE AND DENISE LAWNICI' BY THORNE SURVEY DATED 5-29-19  
AND REVISED 8-01-2019 AND RECORDED IN THE C.C.R.D. AT PLAN BOOK 242 PAGE 18**

*Handout Simon & Murray*





put w/ the file

## **APPLICATION FOR A VARIANCE for the Lawnicki's**

### **FACTS TO SUPPORT THIS REQUEST:**

#### **1. Granting the variance will not be contrary to the public interest because:**

The proposed house with the deck is offset 115.44 from the reference line nearly in the same footprint as the old home and preserves a walking trail between. The existing stairs to the water will be reconstructed nearly in-place for safety with a slight adjustment of the bathhouse (changing room). There is mature tree cover from the waterfront and no primary water view will be denied by the neighbors when this home is constructed. The owner's proposed improvements will not alter the essential character of the neighborhood and will not threaten the health, safety, or general welfare of the public.

#### **The spirit of the ordinance is observed because:**

The Freedom Zoning Ordinance Preamble states that the purpose of the ordinance is to promote the health, safety, and general welfare of the inhabitants of the Town of Freedom.

The variances requested will not alter the essential character of the neighborhood and will not threaten the health, safety, or general welfare of the public. This proposal is in keeping with the spirit of the ordinance.

#### **2. Substantial justice is done because:**

The test for a variance is that: any loss to the individual which is not outweighed by a gain the general public is an injustice.

The owner proposes to:

Remove the existing home, construct a new home 115.44' to the water and 1' further from the sideline than the existing home, replace the stairs to the water to improve safety, as well as reconstruct the bath house along the stairway. The existing stairs to the water are structurally compromised and the stairs will be reconstructed in place to the water's edge. Note the homeowner in the enclosed proposal wants to shift the location of the existing bathhouse from the original footprint, if so permitted.

given @ meeting

garden meeting

These trees will remain



view looking to  
Hussey House from  
front of Lawnicki  
house

Same Pine tree to be removed



Sideline  
view from  
Hussey lot

Front edge of proposed  
house will be where front  
planter is

\*Hillside stumps & roots to remain after being cut

given out @ meeting



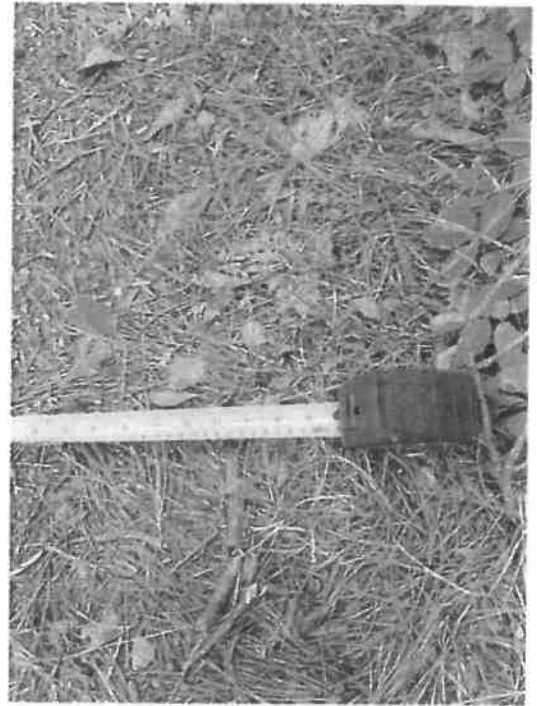
← Looking easterly towards front of Lawnicki house

\* Trees to be cut in lime green ribbon



↑ Looking west from the front of Lawnicki house

Pathway to the right to the view of Ossipee...  
Given out @ meeting



Path is 48 inches  
as shown



Path is 48 inches  
as shown

Pathway to the left towards Hussey House

**Case 33-38**

**Abutter Howlett's Comments on 9/7/2021 Revisions for 169 East Danforth Rd Project**

I.) We want to acknowledge efforts being made to minimize disturbance and impact in the shore zone and to save additional trees from the previous design.

II.)

1.) Designers and contractors are always optimistic that more trees can be saved than actually happens. The revised plans now shows saving some trees that are close to the leveling pads of retaining walls #1 and #2, which may not survive. To offset the trees that will be lost during actual construction, we recommend the leach field be shifted South so (4) more oak trees can be saved. (See Exhibit #1 and #3.)

2.) The western end of retaining wall #2 ends at two oak trees and is some distance from the existing 90' contour. The trees bases are at elevations 88' and 86' and few feet below the proposed new elevation contour. The fill over the tree bases and or the retaining wall work will probably kill the trees and the new disturbed, unretained fill soil could wash out over time and increase runoff into Middle Danforth Pond. We recommend the west end of retaining wall #2 be kicked over to intercept the existing 90' contour to retain the fill area and save trees. (See Exhibit #3).

3.) The drawings do not show the existing drainage swale from the private road. In light of the continually occurring cyanobacteria blooms in Middle Danforth Pond and as one of this project goals is to improve water runoff management of this lot away from the Danforth Ponds and River, we recommend a dry well be incorporated into the first few feet of retaining wall #1 leveling base construction to absorb some runoff (see Exhibit #1 and #4).

III.) To help offset the numerous existing runoff situations around Danforth Ponds that are contributing to the decline in health of the Danforth Ponds, we recommend these minor adjustments be incorporated into the final plans.

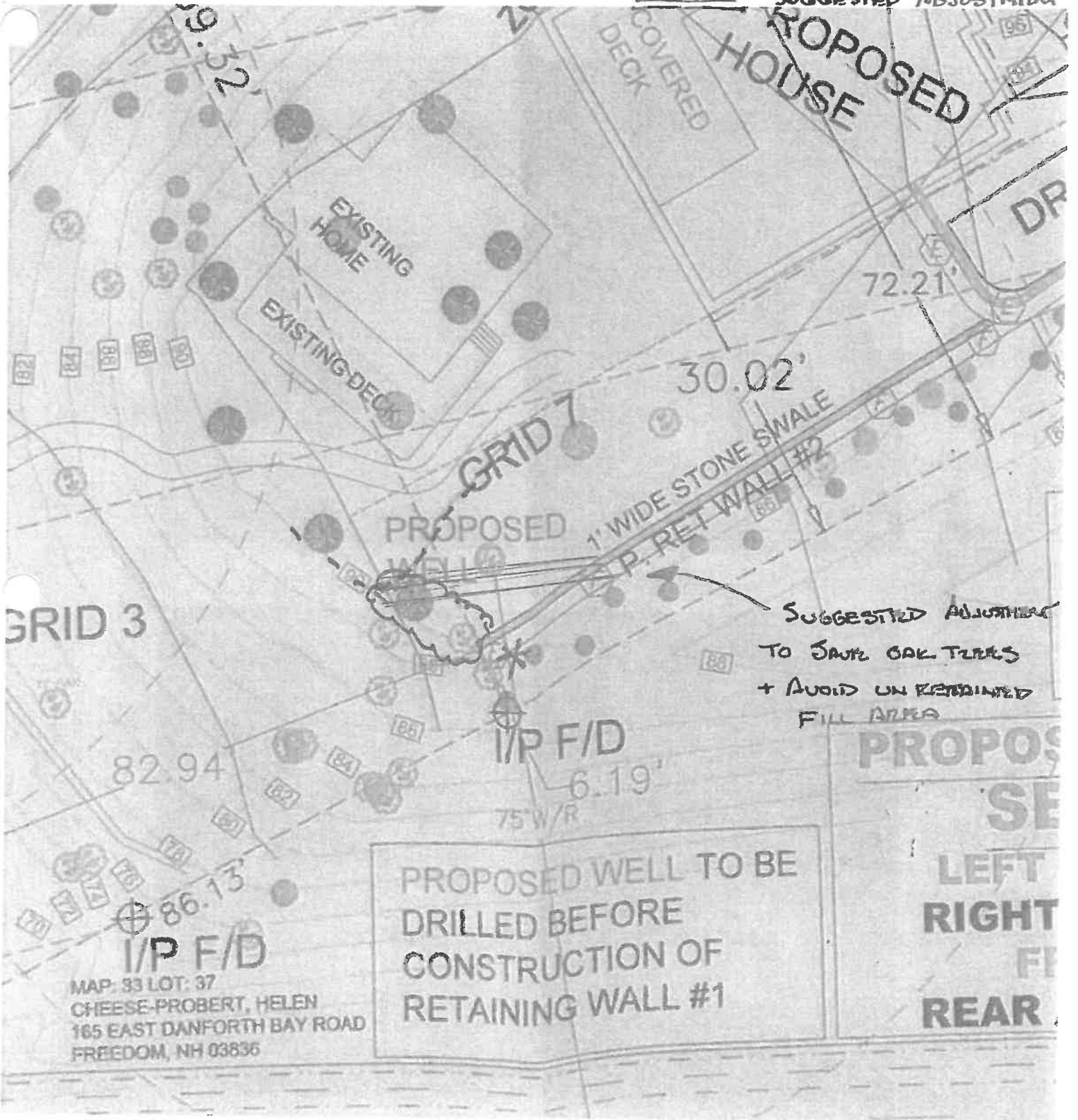
Bruce & June Howlett

EXH #3

\* OAK TREES HARD TO SAVE  
--- EXISTING 90' ELEVATION CONTOUR



PARTIALLY UNRETAINED  
FILL AREA  
SUGGESTED ADJUSTMENT



SUGGESTED ADJUSTMENT  
TO SAVE OAK TREES  
+ AVOID UNRETAINED  
FILL AREA

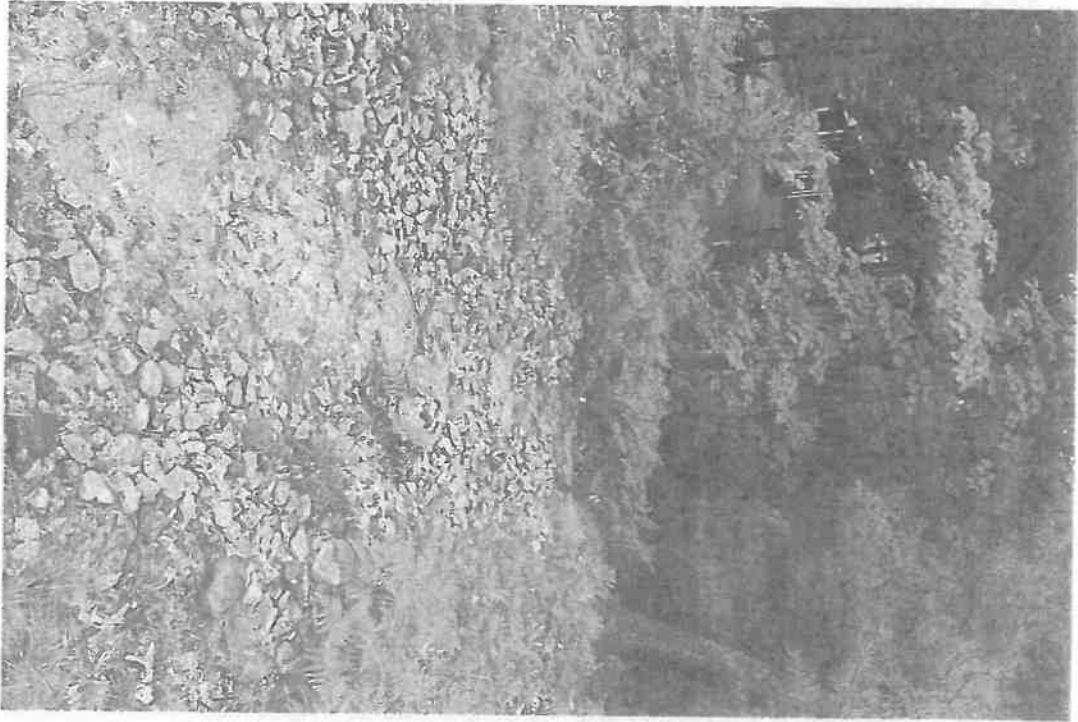
PROPOSED WELL TO BE  
DRILLED BEFORE  
CONSTRUCTION OF  
RETAINING WALL #1

MAP: 33 LOT: 37  
CHEESE-PROBERT, HELEN  
165 EAST DANFORTH BAY ROAD  
FREEDOM, NH 03836

PROPOS  
SE  
LEFT  
RIGHT  
FR  
REAR

EXH #4

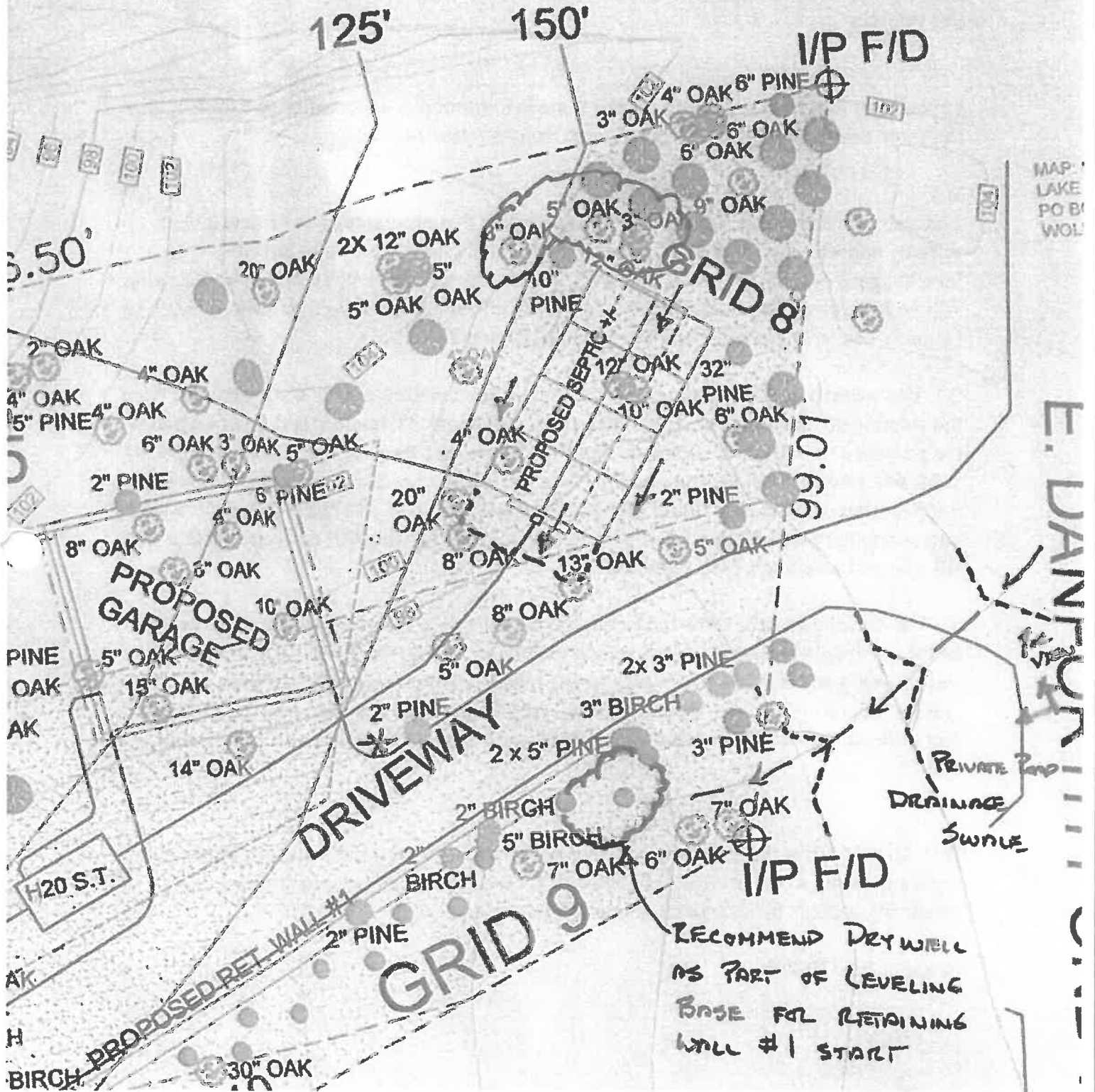
LOOKING WEST FROM PRIVATE ROAD



LOOKING NORTH WEST FROM PRIVATE ROAD



4 OAK TREES TO SAVE IF LEACH FIELD SLIPPED SOUTH 8'-10'



\* PINE TREE PROBABLY NOT SAVEABLE



DRYWELL

--- EXISTING SWALE

John D. Krebs  
43 Sherwood Forest Way  
Freedom, New Hampshire 03836

September 24, 2021

Freedom Zoning Board of Adjustment  
Scott Lees, Chairman  
33 Old Portland Road  
PO Box 227  
Freedom, NH 03836

RE: Tim & Nerine Sullivan Zoning Board of Adjustment Application for Special Exception

Dear Chairman Lees;

I am adamantly opposed to the Special Exception request by Tim & Nerine Sullivan to construct a garage to house a commercial tractor/trailer on a vacant lot (Freedom Tax MAP 7 / LOT 4) on Ossipee Lake Road and West Bay Road. While I'm not an abutter, I have lived in the neighborhood for almost 30 years, and will be impacted by the granting of any relief by the Zoning Board of Adjustment to allow commercial tractor/trailer parking on this lot (or ANY residentially zoned lot) in Freedom. *This very Board has denied this request several times since I have lived in Freedom, and there is no legal reason to allow this use.*

For the following reasons, I believe that the Zoning Board of Adjustment should not permit the storage of a tractor trailer on this Residentially Zoned Lot:

1. The application is flawed. The applicant has applied for a Special Exception, where a Variance is required. §309.2 of the Freedom Zoning Ordinance is excerpted (and redacted) below:

309.2 Accessory uses are uses customarily incidental to the permitted use but may not exceed the following standards without a special exception from the zoning board of adjustment.

309.2.2 Adequate off-street parking must be provided for employees and residents. Article 10 of this ordinance details the requirements for off-street parking.

309.2.3 The accessory use shall not emit noise, smells, and other nuisances. The principal character of residential use of the lot shall not be changed by the accessory use and shall conform to Article 3 Section 310.1.5.

309.2.10 Deliveries are limited to trucks of 12,000 gross vehicle weight (GVW) or less.

309.2.11 No more than three commercial vehicles may be parked at the site. Vehicles must be less than 12,000 GVW.

309.2.12 Accessory uses under this section of the ordinance must comply with all local and seasonal road postings and regulations regarding use of trucks for the accessory use or from deliveries to the lot.

*As a Variance, which is what is required in this case, not one of the five required standards are met.*

2. §309.2.11 allows the Zoning Board of Adjustment to grant a Special Exception to allow a commercial vehicle as an accessory use on a Residential Lot ONLY if the vehicle is less than 12,000 pounds GVW. The subject vehicle weighs three times more, *unladen*.
3. The applicant has failed to notify two abutters: Tax MAP 36 / LOT 2 and Tax MAP 40 / LOT 1-4. The Zoning Board of Adjustment can not consider this application until the Applicant applies for the correct relief sought, and until such time as all of the abutting property owners are properly notified.
4. **Zoning runs with land.** While I'm sure that the Sullivan's are well intended, New Hampshire law stipulates that all Variances run with the land. If in 5, 10 or 20 years, the Sullivan's decide to sell this property, the next owner benefitting from the Variance may not operate in the same manner, but the use will be legally permitted, and the neighborhood will suffer even more.
5. One of the central arguments in the Application is that the property is undeveloped and 18 acres in size, but there is nothing to prevent the owners to subdividing the lot, reducing it in size. *To this end, I suggest that any zoning relief which would allow commercial truck parking stipulate as a condition that the applicant place a Deed Restriction on the property prohibiting future subdivision.*
6. I'm quite familiar with the forestry product business having grown up on a large agricultural / tree farm in Upstate New York and I have friends, family, and business constituents in this business. There will be times when the Sullivan's truck will return to the residential lot with a full load; for instance, the Berlin Plant will stop accepting chips, or traffic will prevent a load from getting to a mill before it closes requiring the truck to return fully laden. There are also times when trucks are loaded in the afternoon and don't leave for a mill or power plant until the following morning. *It's not realistic for the*

***Applicant to guarantee that the trailer will only be empty when parked on the Residential lot.***

7. **Road Damage.** It is true that all of our State and Town roads are used by commercial trucks, school buses, fuel delivery trucks, etc. There is commercial truck traffic on Ossipee Lake Road too; however, most of the use is temporary; during the construction of a new home; food deliveries to our summer camps, etc. Ossipee Lake Road is posted NO THROUGH TRUCKING which prevents all commercial trucks from using the road to drive from Madison/Tamworth to Freedom. The Applicant will be exempt from this requirement, as he will be allowed to travel East or West, and use Ossipee Lake Road as a through Road, because his business is located on the road. In addition to the degradation of the residential character of the existing property, the Town will be impacted by additional truck traffic, the number of trips unregulated. Ossipee Lake Road is the longest and most heavily travelled Town road in Freedom, and the Town has spent more money to rebuild, repave and maintain this road than any other in Town. It is literally the largest public works project in Freedom in the past 50 years. ***What benefit does the Town and neighborhood derive from allowing this use?***
8. **Safety.** The proposed location of the driveway is on the inside of a curve with very limited visibility; the driveway is also located at the bottom of a vertical curve (hill) further reducing visibility. As someone who has commuted on this section of Ossipee Lake Road for 30+ years, I can assure the Zoning Board of Adjustment that a truck pulling out of a driveway (either empty or full) WILL result in motor vehicle accidents, the magnitude of which could be tragic. This section of road is heavily travelled; according to NHDOT, it generates over 3,000 vehicles daily. In all conditions, the proposed driveway will be dangerous when a truck is entering or leaving the site, however, in the winter months, when the road is snow covered, stopping a vehicle for a truck pulling out of the site is going to be catastrophic. This location is simply unsafe.
9. **Aesthetics.** The existing sand pit has been in existence for over 40 years, and wasn't used for any purpose from the late 1980's through +2012. In the 1980's an asphalt Pugmill was placed in the pit to mix cold asphalt used to pave roads in Ossipee Lake Village. Once that temporary operation left, the pit remained unused for 25-30 years, excepting occasional illegal brush dumping. Camp Robinhood has removed very limited amounts of sand from the site and has disposed of their pine needles in the pit over the past few years. While the pit itself is not aesthetically pleasing, the access drive into the pit is very narrow and offers limited view of the area when passing-by in a vehicle. The applicant asserts that reclaiming the site and building a commercial storage garage for a commercial tractor/trailer will beautify the site; I submit:

- A. There are simpler ways to improve this land – simply removing the stumps, illegally dumped construction debris, and pine needles would be inexpensive and would not require any zoning relief.
- B. Building a large commercial garage for a commercial tractor trailer is going to require SIGNIFICANT land clearing, as the overall length of the truck could be anywhere from 50 to 67+ feet. In order for the truck to enter the site, negotiate into and out of the commercial garage safely off the road, the turn around area and driveway entering and exiting the garage will be enormous; the *minimum* turning radius for a 50' tractor/trailer is 89.76'. The land clearing, tree removal and tree buffer removal along Ossipee Lake Road will open up the site to public view, creating a far less aesthetically pleasing site than exists today.
10. **Access and egress to the site.** I have attached Truck Turning Templates for a WB-50 tractor trailer hereto as **Exhibit 'A'**. A review of the Template illustrates that in order for the truck to leave the driveway and turn East and remain in the eastbound lane, the truck will require 110' to make this turn, and the turn is initiated 55' back from the edge of pavement on Ossipee Lake Road. What does this mean? The driveway will need to be over 200' wide for the truck to enter and leave the site without crossing travel lanes on the Town Road. The proposed commercial tractor trailer garage is depicted 70.89' from the front lot line, or +-85 from the Edge of Pavement on Ossipee Lake Road. The entire front of the commercial building will have a wide-open, unobstructed view from Ossipee Lake Road; a residential road.
11. **Case Law.** This very issue has been adjudicated by the New Hampshire Supreme Court. Attached as **Exhibit 'B'** is the landmark case for prohibiting commercial vehicles as "accessory uses" to a residence; BECKER v HAMPTON FALLS, 117 NH 437. This case is particularly salient, as the facts are quite similar; in BECKER, the commercial vehicle was a road grader instead of a tractor trailer, and was also proposed to be stored in a 'barn' out of view. The Court found, among other things that "...the storage of heavy commercial construction equipment cannot be said to bear a reasonable relationship to a residential use and to constitute a use customarily incidental thereto."
12. **Precedent / uniqueness of this property.** The Sullivan's state in their application that because of the lot's size and location, the character of the neighborhood and the Town will not be negatively impacted. As a Zoning Board, you look at every case individually and weigh the merits of each case, but you are always concerned about precedent setting decisions that could justify similar requests of landowners throughout Town. This property is not unique; it's 18 acres on a Town road. There are many large tracts of land in Freedom that could meet the same standard – hide the use behind trees or in a barn –

problem solved. If zoning was only meant to hide or screen land uses the result would be disastrous; residential homes and neighborhoods must be protected from uses that aren't compatible.

Freedom adopted its Zoning Ordinance for many reasons, but the primary reason was to protect our rural character. A conscientious effort was made to draw lines on a map to separate residential uses from commercial uses. Freedom has Commercial Zoning Districts that would accommodate the Sullivan's trucking business and there are multiple commercially zoned properties within 10 miles of Freedom for lease or sale that allow this type of use – a sampling of which are provided below:

**Commercial Real Estate Listings Near Freedom as of 9.23.21:**

1250 Rte. 16, Ossipee, NH 03864 - Listing #:4858568 (ossipeelakere.com) This parcel is 12.1 acres on Route 15 in Ossipee. \$325,000.

1318 Route 16, Ossipee, NH 03864 - Listing #:4879097 (ossipeelakere.com) This property contains a large commercial storage garage, 1.87 acres on Route 16 in Ossipee. \$549,000

2235 Route 16, Ossipee, NH 03814 - Listing #:4862462 (ossipeelakere.com) This property is 7.6 acres of vacant land on Route 16 in Ossipee. \$140,000

80 White Mountain Highway, Tamworth, NH 03817 - Listing #:4855008 (ossipeelakere.com) This property is 4.44 acres, has an existing commercial vehicle storage building and frontage on Route 16 in Tamworth. \$334,500

Permitting this use would be a great injustice to the people living near this proposed commercial use (myself included) and every resident and passerby who live, vacation and recreate in Freedom because of our rural character. Please uphold the plain language of the Zoning Ordinance that has been voted and adopted by the residents of Freedom by granting any zoning relief to allow the commercial use of this property.

Thank you for your consideration,

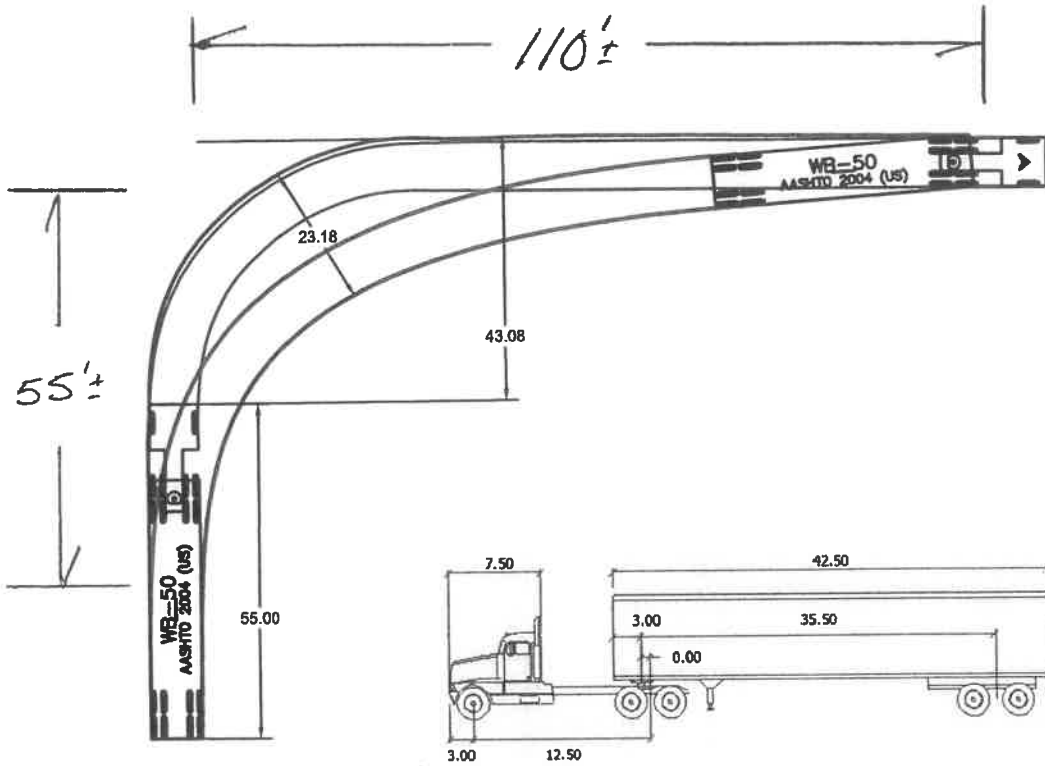


John Krebs

Attachments

CC: Timothy Phoenix, Esq.

# EXHIBIT 'A'



**WB-50**  
steering lock angle = 17.7°

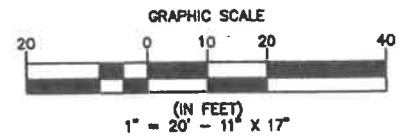
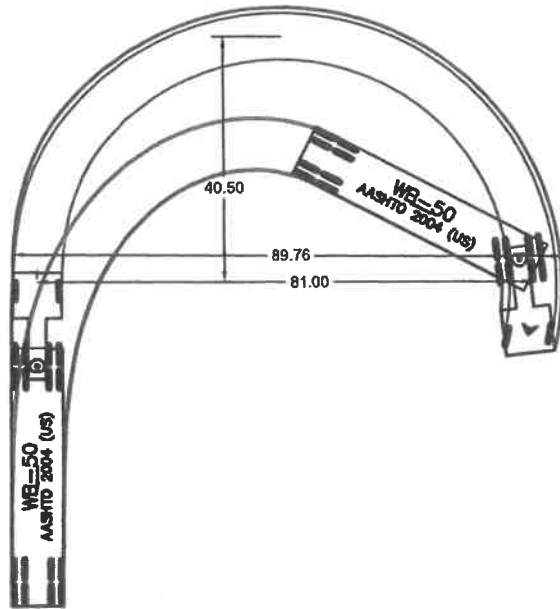


EXHIBIT 'B'

117 N.H. 437  
Supreme Court of New Hampshire.

George W. BECKER et al.

v.

TOWN OF HAMPTON FALLS.

No. 7559.

May 31, 1977.

**Synopsis**

Neighboring landowners brought action challenging action of the board of adjustment in permitting property owner in a residential and agricultural zone to construct a barn on his property for the storage of a road grader. The Superior Court, Rockingham, Loughlin, J., decreed that accessory use had not been established and town's exceptions were reserved and transferred by Mullavey, J. The Supreme Court, Lampron, J., held that use of barn on landowner's property for storage of a road grader used by the landowner as part of a commercial enterprise was not an accessory use of the property within meaning of town ordinance.

Exceptions overruled.

**Attorneys and Law Firms**

\*\*654 \*438 Perkins, Holland, Donovan & Beckett and Thomas D. Welch, Jr., Exeter, for plaintiffs.

Casassa, Mulherrin & Ryan, Hampton (John J. Ryan, Hampton, orally), for defendant.

**Opinion**

LAMPRON, Justice.

The issue in this zoning case is whether the Hampton Falls Board of Adjustment erred in permitting a property owner in a "residential and agricultural" zone to construct on his property a barn for the storage of "primary industrial equipment," namely, a road grader used by the property owner in a commercial enterprise. Resolution of the issue turns on whether the storage of the equipment qualifies as an "accessory use" under the town zoning ordinance. The Superior Court (Loughlin, J.), after a hearing with a view and a recommendation by a Master (Alvin E. Taylor,

Esq.), decreed that an accessory use had not been established and that the board of adjustment's decision must \*439 be reversed. The exceptions of the town have been reserved and transferred by Mullavey, J. We affirm the ruling of the superior court.

The plaintiffs in this action are property owners in proximity to the barn who find the equipment storage offensive. The evidence regarding construction of the barn is undisputed and shows that it was constructed by Mr. Paul Fitzgerald on a lot he and his wife had acquired adjacent to their residential lot. Mr. Fitzgerald operates his own road construction business and the barn was constructed expressly for the purpose of housing the heavy equipment he uses. The equipment is moved back and forth between barn and work site numerous times over the course of the year, and the considerable noise from these moving operations is disturbing to the plaintiffs. There was evidence that certain other inhabitants of the residential and agricultural zone maintain commercial vehicles on their property.

The town zoning ordinance permits "(a)ccessory uses and buildings customarily appurtenant to a principal permitted use such as incidental storage facilities." The ordinance defines "accessory use" as "(a) use customarily incidental and subordinate to the principal use or building located on the same lot with such principal use or building." An accessory building is defined as "(a) detached building on the same lot with the primary building, the use of which is clearly incidental to that of the primary building or use of the land. The plaintiffs argue that the use of the barn for storage of the road grader is not "customarily appurtenant to" a primary residential use. Alternatively, plaintiffs argue that even if the use were deemed "customarily appurtenant," it would not qualify as an accessory use in view of the fact the storage facility is not "located on the same lot with such principal use or building." We have no need to consider this latter argument, since we agree with plaintiff's initial contention that the commercial storage here is not customarily appurtenant to the principal residential use.

Whether the disputed use is "sufficiently subordinate to the residential use of the defendant's property so as to qualify as an accessory use is a question of law upon which the court is not bound by the conclusions \*\*655 of the zoning board." Gratton v. Pellegrino, 115 N.H. 619, 621, 348 A.2d 349, 351 (1975); RSA 31:78.

\*440 "An 'accessory use' has been defined as 'one which is dependent on or pertaining to the permitted principal use',

i. e., a subordinate use of the property 'occasioned by the main use, and an incident of it, rather than a principal use of itself.'" Gratton v. Pellegrino, 115 N.H. 619, 621, 348 A.2d 349, 351 (1975); Perron v. Concord, 102 N.H. 32, 35, 150 A.2d 403, 406 (1959). The definition of accessory use in the town ordinance ("customarily incidental and subordinate (sic)") involves several distinct elements. "Incidental and subordinate" incorporates the requirements that the accessory use be minor in relation to the permitted use and that the accessory use bear a reasonable relationship to the primary use. Lawrence v. Zoning Board of Appeals, 158 Conn. 509, 512, 264 A.2d 552, 554 (1969); Harvard v. Maxant, 360 Mass. 432, 275 N.E.2d 347 (1971). "Customarily" imposes an additional requirement that the accessory use habitually has been established as reasonably associated with the primary use. *Id.*; Lawrence v. Zoning Board of Appeals, *supra*; see Gratton v. Pellegrino, *supra*; Perron v. Concord, *supra*; In re Diamond St. Telephone Co., 10 Terry 13, 49 Del. 13, 108 A.2d 667 (1954).

We hold that the master properly ruled as a matter of law that the storage of heavy commercial construction equipment cannot be said to bear a reasonable relationship to a residential use and to constitute a use customarily incidental thereto. Dumais v. Somersworth, 101 N.H. 111, 134 A.2d 700 (1957). Storage of the equipment is in no way "accessory" to the residential use which the ordinance permits; rather it simply represents an effort by Mr. Fitzgerald to locate a portion of his commercial enterprise near his home.

In a factually similar case, we held that the storage in a three-stall garage of commercial oil trucks could not be deemed a use accessory to a residential dwelling. Dumais v. Somersworth, 101 N.H. 111, 114, 134 A.2d 700, 701 (1957). Similar results have been reached in other jurisdictions. Colabufalo v. Public Buildings Commissioner, 332 Mass. 748, 127 N.E.2d 564 (1955); Warwick v. Campbell, 82 R.I. 300, 107 A.2d 334 (1954); Dolan v. DeCapua, 13 N.J.Super. 500, 80 A.2d 655 (1951); New Rochelle v. Dandry, 191 Misc.

977, 79 N.Y.S.2d 126 (City Ct.1948); People v. Scrafano, 307 Mich. 655, 12 N.W.2d 325 (1943). These cases may be said to reflect the fact that zoning ordinances generally seek "to avoid . . . the infiltration of residential areas with small businesses or their appurtenances." \*441 Muskegon Heights v. Wilson, 363 Mich. 263, 267, 109 N.W.2d 768, 771 (1961).

The defendant places considerable reliance on the evidence that, in this town of about 800 registered voters, about eight other property owners used their premises for the storage of commercial vehicles. This evidence was of limited value on the issue of local custom, since there was no indication of the proportion of business men engaged in the practice. It failed to establish that the use complained of has commonly, habitually and by long practice been established as reasonably associated with the primary residential use in the town. "If the ordinance is not being enforced in certain instances this cannot alter the meaning of the ordinance." Hancock v. Concord, 111 N.H. 413, 414, 285 A.2d 791, 792 (1971). We are of the view that the above evidence could not "bootstrap" to the status of an accessory use a use which has no reasonable relationship to a permitted use. See Harvard v. Maxant, 360 Mass. 432, 440, 275 N.E.2d 347, 352 (1971); Lawrence v. Zoning Board of Appeals, 158 Conn. 509, 513, 264 A.2d 552, 554-55 (1969).

There is no contention that the barn itself is offensive. Plaintiffs' objection goes to the storage of commercial vehicles. We affirm the ruling of the superior court that the town zoning ordinance prohibits the use of the barn or property for such storage. See Dumais v. Somersworth, 101 N.H. 111, 115, 134 A.2d 700, 702-03 (1957).

Exceptions overruled.

DOUGLAS, J., did not sit; the others concurred.

#### All Citations

117 N.H. 437, 374 A.2d 653

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## Town of Freedom

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**From:** Linda Mailhot <lindamailhot@gmail.com>  
**Sent:** Wednesday, October 6, 2021 9:59 AM  
**To:** Town of Freedom  
**Subject:** Re: FAC Meeting Canceled for October 6, 2021

Hi, Stacy.

Yes, I did realize that serving on the committee was by appointment.

Here is what I read from. Thank you, Stacy.

Thank you Mr. Chair and members of the board. I will try to be respectful of the instructions that you gave at the beginning of the meeting.

While I agree that the lot is large enough for a very large barn / garage & house, my concerns & questions are the following:

309.1 States the ordinance intends to preserve the quiet, uncrowded & scenic features while maintaining its neighborhood character. What hours will this tractor trailer be driving in & out? As far as it keeping in character with the neighborhood, how large will this garage has to be in order to house the truck and tractor trailer and what will it look like?

I'm not sure which subsection or subsections of 309.2 are exceptions being sought for.

309.2.3 States the use shall not emit noise, smells or other nuisances. Will this truck be idling, particularly in the winter? What year is this vehicle? Does it have the particle filters for the emissions system? These trucks have to warm up before driving and that can't happen in a fully enclosed garage.

309.2.11 States vehicles must be less than 12,000 GVW. What is the registered weight of this logging truck / tractor trailer? A one ton F350 pick up truck has a GVWR of 11,000-14,000lbs. Will the tractor trailer be loaded when it comes into the neighborhood? I have concerns about the truck tearing up the road. The road agent does an excellent job taking care of the roads in our neighborhood and all over town. This will make that job much harder and be an added cost for the town. The asphalt on our road is sprayed asphalt. It's liquid asphalt sprayed on top of dirt and sand is mixed with it. It is not designed for this type of load on a sustained basis. Recently, a driveway was paved on our road and the truck & trailer (not a tractor & tractor trailer) with the equipment for that paving job was only about 25ft with 2 axles holding a little paver and a skid steer and that broke the edge of the road all up. Will there be proper site distances on Ossipee Lake Road? Turning radius? West Bay Road is not at a 90 degree angle to Ossipee Lake Road which will make turns onto West Bay Road and onto Ossipee Lake Road extremely difficult and will require a tractor trailer to go into the other lane of oncoming traffic on both roads. Ossipee Lake Road which is a highly traveled road with lots of campers and RVs. Since it is a residential neighborhood, West Bay Road consistently has walkers, joggers and bicyclists using it.

309.2.12 Requires uses to comply with seasonal road postings; How will this tractor trailer be able to comply with said postings? I'm certain the roads are posted at a much lower capacity than the vehicle weighs.

As a small business owner, I am in favor of a home occupation but I'm not sure that this piece of property is the right fit for a logging truck and tractor trailer. I also would not want to see special exceptions for this use run with the property in perpetuity and be susceptible to possible changes of use over the course of time.