

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
June 14, 2021**

DATE APPROVED: 7/12/21

TIME: 7:00 p.m. – 8:30 p.m.

CHAIRPERSON: Robert Hansen

VICE CHAIRPERSON: Meg Curtis-Sauer

MEMBERS: Russell Galpin, Roger Racette

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Lucy Pivonka, Katherine Charrette, Mark Bodanza

EXCUSED Katherine Charrette

Public Present: Sharon Monahan, Richard Head, Albert Beaulieu, Susan Beaulieu, Patrick Shea, Sunny Mulligan Shea

CALL TO ORDER:

Chairman Bob Hansen called the meeting to order at 7:07 p.m.

Bob Hansen called the roll and appointed Alternate Mark Bodanza to fill the vacant ZBA seat.

He asked the room to rise and recite the Pledge of Allegiance.

Minutes 04/12/21

Roger Racette pointed out a typo. Russ Galpin made a motion to accept the minutes as amended. Roger Racette seconded the motion. The motion passed unanimously.

Public Hearing

2 Variances

10 Tasker Road (Map 20 Lot 25)

Scott Schulman

Represented by Sharon Monahan

Variance A

Zoning Ordinance sections 229-10 Stream and Shoreland Protection, 229-36 Waterfront Development and Table 3- 25' Side Setback on Lake Lots to build a 3 car garage with an office above within 65 feet of the high water level of Franklin Pierce Lake and within 20' of the side property line.

Variance B

Zoning Ordinance sections 229-10 Stream and Shoreland Protection, and 229-36 Waterfront Development to build a 12' x 13' overhead deck on to an existing nonconforming house over an existing 12' x 13' patio with a 4' x 8' walkway connecting the deck to the open porch. The existing 20' setback from the high water mark of Franklin Pierce Lake is maintained.

Chairman Hansen elected to address variance request "B" first.

Representative for the applicant Sharon Monahan was asked to respond to the five criteria.

A. Granting the proposed Variance will not be contrary to the public interest because:

Sharon Monahan said the proposed deck is located over an existing patio which is also 12' x 13'. The house is located 20' from the high water mark. This deck will not increase the encroachment.

Roger Racette asked if the additional impervious surface created by the 4' x 8' walkway had been addressed by DES yet?

Ms. Monahan said it had not been submitted to DES because the applicant was waiting to find out if he was successful with his variance application.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because:

Ms. Monahan said this is a non-conforming house already located within the 75' Shoreland Protection Setback. This non-conforming house already has a 12' x 13' existing patio. There will be no additional impact in impervious surface area beyond the walkway, which is in the spirit of the ordinance

C. Granting the proposed Variance will do substantial justice because:

Ms. Monahan said there is already a three-foot-wide overhang above the patio area but it is not sufficient to provide enough protection from the rain or the sun.

Roger Racette asked if in order to protect the patio from rain the deck needs to be expanded. That is an increase in impervious surface. However, the impervious surface is over the existing impervious surface so they will cancel each other out. Ms. Monahan said the state does not recognize it as new impervious surface.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because:

Ms. Monahan said it would enhance the aesthetic lakeside view of the house to have an overhead deck.

E. Literal enforcement of the provisions of the ordinance will result in an "unnecessary hardship" because:

Ms. Monahan said it's an existing non-conforming house on the lake. The patio is already existing. The proposed overhead deck is reasonable because it provides shelter from the elements without further encroachment into the waterfront setback and it is aesthetically more practical and useful to the owner to be able to use his property and existing patio.

Roger Racette asked if DES controlled what building materials would be used for the deck. Ms. Monahan said that she did not know what materials would be used only that it is an open balcony.

Roger asked if the patio would be considered a structure. Ms. Monahan said that the patio was considered an impervious accessory structure by DES. Roger said the DES laws specifically address structures so would it be possible to say the patio is already a structure there. Ms. Monahan said the patio is not attached to the house. DES allows existing non-conforming houses to have up to a 12' deck toward the water as long as it doesn't extend over the water.

Bob Hansen asked where the walkway would be located. Ms. Monahan said it would connect the overhead porch to the balcony.

Bob Hansen opened up the hearing for public comment.

Mr. Hansen recognized Richard Head, Chairman of the Conservation Commission. The Conservation Commission asked him to come to express some concerns about the application. The ordinance says "No building or impervious surface shall be located within 75ft of the average mean high water level of any lake, pond or stream with a normal year round flow." Mr. Head handed out a document, "The New Hampshire Guidelines for Coordinated Lake Management and Shoreland Protection Plans" (attached). Mr. Head quoted from the document:

"Research performed throughout the country has determined that the impervious cover is a good general indicator of the landscape change impacts on stream hydrology and biological health. The finding from over 225 research studies predict that most water quality indicators decline when watershed impervious cover exceeds 10 percent with severe degradation expected beyond 25 percent impervious cover (Center for Watershed Protection, 2003)"

Mr. Head said that was why the Con Comm is concerned about impervious cover next to a lake. He said he was not saying that one deck was going to exceed 25 percent cover that's going to in and of itself degrade the lake, but that is why there is a prohibition. That is why you have a very carefully thought through variance process to make sure you aren't ultimately approving impervious surfaces that collectively start to impact Franklin Pierce Lake.

Ultimately that is what we are talking about. That is what gets to the questions and what it is we are asking those questions for as it relates to this very specific variance request which relates to impervious surfaces. So going through the questions starting with "A", looking at it from the public interest, you have to know what the public interest is before you answer that question.

The public interest in the context of an ordinance that prohibits impervious surface is protection of the water quality of Franklin Pierce Lake. He said he was not going to say that one patio is going to destroy the lake but he was going to suggest these are some of the questions you are going to want to answer.. Because what you have heard so far is that there is a patio below. He said he could not tell from the application how that patio was made. He said he didn't know how pervious or impervious it was.

Mr. Hansen said it looked like patio brick pavers. They are hand laid with no mortar so it is not a solid structure.

Mr. Head said what he doesn't know from the application is when water hits the patio does 100% or 50% of it run off through cracks or spaces between the pavers, and what are you talking about with the deck. One of the things we have heard is that the homeowner wants to get out of the rain. That suggests that the water that is hitting the deck is not dropping straight down on to the same footprint. You have water that is going to be shed off that deck in a different direction. Now do you have water coming from an additional height hitting the ground that is not the same footprint as that patio.

Why do we care about impervious surface? Because what you get is an increase of water flow on soil. You have an additional flow of water, that picks up nutrients, soil and contaminates and it is flowing that toward the lake. What we understand from the application is the water is going to be shed to a much larger area than that footprint because it's coming off the proposed deck, dropping on to the ground, creating a disturbance of the soil underneath it and you have an additional flow of water. He suggested that those are things the Board should understand and the applicant has taken those things in to consideration. One of the other questions is how is water being controlled as it is coming off that deck. Is it coming through gutter systems? Is it shedding off, and what is it landing on and what are the protections that exist between where it is landing and the lake. Is there additional construction or plant life? As a Board those are things you need to understand.

Then in "B" does it Observe the Spirit of the Ordinance. You have the footprint of an existing deck, but again you have to look at the purpose of the ordinance which is protection of the lake. You want to make sure you are not causing additional nutrient flow toward that lake. You need to ask what actions is the applicant taking to ensure that the water is slowing down as quickly as it can and how is the design taking those things in to account. As Chair of the Conservation Commission he was asked to make sure the Board had those things in mind.

Mr. Hansen thanked Mr. Head for his comments.

Abutter Albert Beaulieu, said he had been coming up to the lake since 1989 and he thought the patio had been built by the previous owner, and that it had not always been there.

Ms. Monahan said she did not know who built it but it was there when the current homeowner bought it.

Roger Racette said he wanted to address what Mr. Head had said. He said Mr. Head had cited 229-10 which allows nothing within 75 feet. "Nothing" is not possible for them. Roger said we don't have an ordinance that specifically addresses impervious surface. DES goes through formulas and they come out with a percentage of what's acceptable. He asked what is our standard for impervious surface?

Richard Head said there is a standard and it is zero. The Board needs to determine if the standards of the variance have been met.

Sharon Monahan asked if she could respond. Chairman Bob Hansen recognized her.

Ms. Monahan said she has done shoreland permitting so she is familiar with DES regulations. She said that this is a one-acre lot and the impervious area is less than 20 percent which doesn't require stormwater management. However, the applicant is open to conditions for stormwater management or preferred construction materials attached to this decision.

There being no other public comments Mr. Hansen closed the Public Hearing and entered into deliberations.

Russ Galpin said he had twice heard reference to DES controlling any of this. He said DES rarely finds any fault with ZBA determination. There was one variance granted that was 12 ½ feet from the water down a straight ledge in to the water. The Zoning Board approved it and DES said nothing about it. So let's not have the Board think that DES is going to be the cover over any decision they make.

Bob Hansen said no one thinks that, but he is correct.

Mark Bodanza asked for confirmation that this is an open rail deck above the patio surface and that it is not shedding water by way of a roof. This is a decking system that may or may not flow down in to the patio area or captured by a bladder or something of that nature.

Ms. Monahan said it was an open deck and a balcony.

Roger Racette asked if it was going to be pitched so water would run away from the house, so it is going to run off to one side.

Ms. Monahan said it was.

Bob Hansen said as a board they need to take into consideration a lot of factors. One being the reasonable use of a piece of property by a homeowner who owns the dirt surrounding his home, and his enjoyment of that property. Take in to consideration the Conservation Commission's concerns about water runoff, and we can take in to consideration certain conditions that can be put into place if this variance application is approved. Gutter systems diverting water, no straight line flow going in to the lake, runoff will be captured on the property and disposed of either through filtration trench or other options so it is not overkill on the property owner but it is still going into the reasonable manner of working with the lake.

Bob Hansen asked if there were any other comments from the Board.

Roger Racette said his only comment (understanding where Mr. Head was coming from) is that we have a shoreline ordinance which doesn't allow anything. There's no guidelines to what is acceptable, what is not acceptable, it's just zero. To him that is just too stringent. He said he did not know if it was up to the ZBA to come up with formulas about how much of the lot can be impervious or how much of it can be not. They have never done that.

Russ Galpin said that was the point of the Zoning Board of Adjustment. To have the citizens decide whether it is detrimental enough to deny it or whether it is not so bad that they can approve it. Writing up a whole bunch of criteria will make a ten-page letter of criteria when you get through with it. This is what the Zoning Board of Adjustment is for.

Bob Hansen said adding a subsequent condition to put a gutter system on a deck so that the water runoff isn't a straight line flow in to the lake is not a ten-page report.

Russ Galpin said his comment was directed at Roger Racette's comment that there were no criteria. He said he could understand that the runoff seems to be a problem on this particular lot the ZBA can request that it does have a gutter system to run it in to a dry well or something of that nature. Which we have done in the past.

Roger Racette said from a zoning perspective what you look for in order to grant a variance is existing conditions of the property and some of the existing conditions is that this is a non-conforming as built structure. They are not going to move the house in order to get the deck back 75 feet. So we are dealing with as built conditions and also in the Rural district the minimum lot size is two acres. So we are dealing with a lot that is half of the standard and those are a basis for variances.

Bob Hansen said he wanted to have a vote on the application for the deck as presented in one vote.

Russ Galpin did not agree that this was right.

Bob Hansen affirmed that this was a legal way of voting.

Roger Racette said he didn't think the request would result in a detrimental effect of Franklin Pierce Lake, so he would vote to approve.

Russ Galpin said he would vote to approve on the condition the water runoff from this roof be put in to a drywell so that it doesn't flow directly in to the lake from the roof. Because 20ft from the water is a very short distance for that amount of water in a heavy storm to not go directly in to the lake and take with it a lot of silt and whatever else is on the ground.

Bob Hansen asked for a motion to approve the condition as stated by Russ.

Meg Curtis made the motion to approve Russ's condition. Roger Racette seconded the motion. The Board voted unanimously to stipulate the condition.

Bob Hansen called on Mark Bodanza. He agreed to approve with conditions for water mitigation to address issues from the Conservation Commission that have been expressed if this is the most appropriate means, using a drywell. He said he did not have the expertise to determine that but some kind of mitigation would be appropriate.

Meg Curtis said she would vote for it under the condition of the dry well.

Bob Hansen said the Chair votes to approve with the conditions stipulated to prevent any water shed.

Roger Racette asked if the building materials should be stipulated with a condition. Following a brief discussion this was not to be a condition.

Bob Hansen said they would be leaving deliberations and the application was approved with the conditions as stated.

Bob Hansen announced the ZBA would now address Variance application "A" which was for:

Variance A

Zoning Ordinance sections 229-10 Stream and Shoreland Protection, 229-36 Waterfront Development and Table 3- 25' Side Setback on Lake Lots to build a 3 car garage with an office above within 65 feet of the high water level of Franklin Pierce Lake and within 20' of the side property line.

A. Granting the proposed Variance will not be contrary to the public interest because:

Sharon Monahan said the existing non-conforming house does not currently have any garage for vehicles or boats. It is in the public interest to keep vehicles, boats and equipment in a building, aesthetically and also for fuel containment, and within walking distance from the house.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because:

Sharon Monahan said the garage with the office is set back as far as possible from the lake at 65 feet. Only one corner can't make the 75 ft setback as demonstrated on the plan. All of the grading for the proposed garage is going to be greater than 50 feet from the water to protect water quality in the spirit of the ordinance. Also the garage is located on the most heavily wooded portion of the lot.

Roger Racette asked what is preventing them from moving the garage back. The one corner is 65 feet. What is preventing you from pushing it back 10 feet? And what is preventing you from moving away from the side setback.

Sharon Monahan said the lake side is the widest portion of the lot. If I go back farther I am encroaching further in to the side setback. And also, the driveway area is becoming more narrow so they needed to find that compromise place where it was the widest part of the existing driveway to enter the garage and to be able to turn around.

Roger Racette said it is hard to determine where that driveway is. Based on what he is looking at he still doesn't see what is preventing the homeowner from pushing the corner of that structure back from the 75' setback.

Sharon Monahan said because the driveway becomes narrow there and also the property line. They did not want to encroach further in to the property line side setback.

If it is pushed back to the beginning of the stone wall, they will be closer to the abutter's property line and their existing driveway, and it will be in the narrowest point of the driveway. Vehicles will need to enter the garage.

Roger Racette and Sharon Monahan reviewed the plan together. Roger Racette pointed out locations that appeared to be places the garage could be pushed back to in order to get out of the setbacks.

Bob Hansen agreed that it looked like there was room to move the garage back.

Roger Racette said that the applicant has to make every attempt to comply with the setback requirements. If it is just for the view of the lake that is not sufficient.

Sharon Monahan said no, it is the width of the parking area to be able to turn vehicles.

Roger Racette said all they are asking is to move the garage 10 feet so it is out of the Shoreland setback.

Sharon Monahan said she doesn't have much room between the leach field and the narrowest part of the driveway.

Ms. Monahan drew an approximation of the driveway location on the plan. She suggested it would be a good idea to have a site walk so the Board can understand the reason behind the proposed location of the garage.

Roger Racette said he is not convinced that this building could not be more reasonably located. If the property owner were present, he could explain it better. He suggested continuing the meeting.

Bob said the application should be tabled until more information is received.

Sharon Monahan asked the Board to do a site visit.

Bob Hansen said that once the owner comes back a site visit can be scheduled.

Ms. Monahan said she expected the owner to be back in a week.

Russ Galpin made a motion to table the application to Monday June 28th at 7:00pm. Meg Curtis seconded the motion. The motion carried unanimously.

Roll call Vote: Mark Bodanza-Y, Russ Galpin-Y, Roger Racette-Y Meg Curtis-Sauer-Y Chairman
Bob Hansen-Y

Meeting Adjourned 8:30 pm

Respectfully Submitted,

Robyn Payson
Planning Director

The New Hampshire Guidelines for Coordinated Lake Management and Shoreland Protection Plans

Prepared By:

NH Lakes Management and Protection Program
and the
NH Lakes Management Advisory Committee

State of New Hampshire
Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
(603) 271-2959

<http://des.nh.gov/organization/divisions/water/wmb/lakes/index.htm>

Thomas S. Burack
Commissioner

Michael J. Walls
Assistant Commissioner

Harry T. Stewart
Water Division Director

February 2009



The State of New Hampshire's Lakes

The greatest threat to the water quality of New Hampshire's lakes is land conversion. For the past 40 years, New Hampshire's population has grown twice as fast as the rest of New England and this rapid growth is projected to continue. In areas of the state where the most development and land conversion is occurring, land conservation has lagged behind land development. Land development has outpaced land conservation in 130 communities, or 56 percent of all cities and towns. New Hampshire is losing about 17,500 acres of forestland every year (SPNHF, 2005). Research performed throughout the country has determined that impervious cover is a good general indicator of landscape change impacts on stream hydrology and biological health. The findings from over 225 research studies predict that most water quality indicators decline when watershed impervious cover exceeds 10 percent, with severe degradation expected beyond 25 percent impervious cover (Center for Watershed Protection, 2003).

Existing management efforts, by themselves, cannot halt water quality degradation. Continued declines in water quality will adversely affect quality of life of New Hampshire residents and will produce increasingly adverse economic impacts. A study conducted in 2002 determined that just four uses of the state's surface waters - boating, fishing, swimming, and drinking water supply services - contribute up to \$1.5 billion annually in total sales to the state's economy and merely the presence of surface waters boosts tax revenue by an estimated \$247 million per year in property taxes (Shapiro & Kroll, 2003). More recently, a survey of boaters, anglers, and swimmers determined that if these user groups *perceived* degradation in water clarity and purity their use of these surface waters would decline, resulting in an economic loss of \$51 million in total sales, \$18 million in personal income and more than 800 jobs statewide (Nordstrom, 2007).

Water quality assessments for New Hampshire's rivers and lakes are conducted on a biennial basis to describe the quality of its surface waters and analyze the extent to which they support fishing, swimming, and aquatic life. This information is then reported to Congress. Like other states, New Hampshire has a statewide freshwater fish consumption advisory in effect due to mercury levels found in fish tissue; the primary source of which is atmospheric deposition from both in-state and out-of-state sources. When this advisory is included in the assessment, all surface waters, are by definition, less than fully supporting of all uses. Because DES cannot unilaterally resolve the mercury issue as much of the mercury is not generated in-state, and to provide a more balanced or fair assessment of the state's surface waters, two assessments are provided; one which takes into account the mercury advisory and one which does not. The assessment that *does not account for mercury* conveys information that would otherwise be masked by the mercury advisory and more importantly, it represents information on impairments for which corrective action can be taken at the state level (Comstock and Edwardson, 2008). The following information was taken from the 2008 assessment.

There are a total of approximately 164,615 surface acres of lakes and ponds that need to be tested. For the "swimming" designated use, 22 percent of the state's surface water acres have not yet been assessed. Of the 78 percent of the surface water acres that have been assessed, 90 percent support swimming while 10 percent do not. For the "aquatic life support" designated use 38 percent of the state's surface waters have not been assessed. Of the 62 percent that have been assessed, 0 percent fully supports aquatic life while 100 percent do not. The majority of lakes that do not fully support aquatic life (70 percent) are due to pH values that fall below the minimum pH water quality standard of 6.5. In many cases the pH readings were just below the standard (i.e., between 6.0 and 6.5) and are not expected to result in any significant adverse impacts to aquatic life (81 percent of pH impaired lakes). The source of low pH is primarily

attributable to deposition of acids in the atmosphere when it rains (i.e., acid rain). The source of acidifying pollutants in the atmosphere is air emissions, primarily from fossil fuel burning power plants and motor vehicles. Since 1991, New Hampshire has taken active steps to reduce emissions from within the state. While some emissions still occur from within New Hampshire, the majority of emissions are from sources outside of the state.

Cyanobacteria are a growing concern in New Hampshire. Cyanobacteria are microorganisms that photosynthesize. Many species of cyanobacteria can accumulate to form surface water blooms. They are blue-green in color and may consist of thousands of individual cells. An increase of phosphorus in combination with increased sunlight and warmer water temperatures often accelerates the production of cyanobacteria growth in a lake. Several cyanobacterial species produce toxins (cyanotoxins) that can cause both acute and chronic problems in humans. The possible effects of cyanobacteria on New Hampshire lakes and their natural inhabitants, such as fish and other aquatic life, are under study at this time. The Center for Freshwater Biology (CFB) at the University of New Hampshire is currently examining the potential impacts of these toxins upon the lake food web. The potential human health hazards via exposure through drinking water and/or during recreational water activities are also a concern to the CFB and DES (DES, 2002).

Other issues include invasive species, aquatic habitat and climate change. As of 2007, there were 72 documented infestations of exotic species, including Didymo, in the state's lakes and rivers (DES, 2008). Local meteorological records indicate that spring is arriving earlier, summers are growing hotter and winters are becoming warmer and less snowy (Frumhoff et.al., 2007). These weather changes will impact our aquatic resources; some species may not be able to tolerate the warmer water temperatures. Warmer weather will extend the water recreation season and more and more people will use our waters seeking relief from increasing temperatures. Droughts may occur with greater frequency and duration, stressing those surface waters that supply drinking water. Storm events are expected to be more severe and frequent, contributing greater volumes of nutrient laden waters into our lakes and rivers (Frumhoff et.al., 2007).

As noted above, accelerated development and increased impervious surfaces in our watersheds are deteriorating our surface waters. The volume and frequency of stormwater runoff is increasingly more damaging to aquatic systems. Climate change as well is altering our weather and our environment. Even though these factors can be challenging to address, they should be taken into consideration when developing a *Coordinated Lake Management and Shore/and Protection Plan*, since a *Coordinated Lake Management and Shore/and Protection Plan* is the single most effective tool a community can develop to protect its lake or pond.