

**ZONING BOARD OF APPEALS
SPECIAL MEETING
September 30, 2014 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET
MINUTES**

PRESENT: Chairman Mary Lou Rayno, Paul Griffin, Scott Goff; Alternates Lew Chappel and Keith Schaufler; Zoning Enforcement Officer Steve Sadlowski.

ABSENT: Paul Brander, John Rouleau, John Wilhelm.

Chairman Mary Lou Rayno called the meeting to order at 7:00PM. Alternate Keith Schaufler was seated for Bert Brander, and Alternate Lew Chappel was seated for John Rouleau. The entire proceedings were recorded digitally and are available in the Town Hall.

1. PUBLIC HEARINGS:

A. Stephen M. Kayser & Vicki L. Radford Kayser, 122 Camp Workcoeman Road, Special Exception for demolition and reconstruction of a nonconforming deck. (Continued)

Chairman Mary Lou Rayno opened the Special Meeting by continuing the public hearing.

Ms. Rayno provided board members with copies of emails she received with regards to this application and a legal opinion regarding the definition of “normal wear and tear”. Mr. Scott Goff, after the board’s last meeting of September 17, 2014, requested clarification through the First Selectman’s Administrative Assistant, Ms. Christine Hayward, of the town’s land use attorney, Mark Branse, Esquire. The communications, via email, were printed and copies were provided to board members, the applicants, as well as members of the general public present at the public hearing.

Mr. Goff indicated that he perceived the regulation to be vague as it pertained to “wear and tear”. Opinions were had by initially Mr. Sadlowski and subsequently Attorney Branse which both provided some clarity, according to Mr. Goff. He indicated that it is still not a cut and dry matter but that some shed some light had been shed on the responsibility of board members as they apply the standard.

Mr. Sadlowski commented that in effect if a homeowner tears down a legally nonconforming structure, i.e. house or deck, the Zoning Board of Appeals must grant a Special Exception in order to rebuild that in the same spot.

Mr. Keith Schaufler inquired as to the minimum side yard setback at the location. Mr. Sadlowski responded that it is twenty (20') feet. The subject property is pre-existing, nonconforming.

Mr. Stephen Kayser addressed the board regarding his application, providing them with a survey reflecting the location of his home along with the boundary line settlement with the neighboring property. He explained that he is seeking to rebuild his deck, exactly as it is presently. He reminded board members that his deck does not conform but rather than repair the deck that is forty years old, he seeks to tear down what is existing and replace all of it at one time.

Mr. Kayser reminded the board that at the September 17, 2014 meeting, discussion occurred around possibly moving the deck three feet. After time to reflect on this, Mr. Kayser is not interested in this proposal. Moving the deck three feet would necessitate a 30° angle, and this is not a look that he would be interested in.

Mr. Lew Chappel inquired as to what point this project would constitute demolition. Mr. Sadlowski indicated that no defined definition exists for demolition but is instead a judgment call.

Mr. Goff explained to Mr. Kayser that among the goals of the Zoning Board of Appeals is to always try to get nonconforming properties to move closer to becoming conforming properties as opportunities for doing so arise. If not able to do so completely, sometimes a compromise is appropriate, according to Mr. Goff. Moving the deck three feet was something that the neighbors were agreeable to and would also accomplish bringing a non-conforming property closer to becoming a conforming piece, according to Mr. Goff. Mr. Kayser responded that the deck has been in its present shape and location for forty years and he reiterated that he would like to keep it the way it is even if it were to mean that he repairs it piece by piece.

Mr. Schaufler inquired as to whether the applicant would be installing new footers if the deck was to be completely rebuilt. It was determined that he would if the deck is completely rebuilt.

Attorney William Case addressed the board on behalf of the neighbors of the subject property, John and Bonnie Flattery of 116 Camp Workcoeman Road. He indicated that the application is lacking detail, specifically the size of the deck to be demolished and repaired and how it is being repaired. He opined that the application should include photographs of what the deck looks like presently. Mr. Sadlowski indicated that the file does contain photographs. Attorney Case continued that the application is lacking details as to the materials that would be used to repair the deck.

Attorney Case concurred with the position of Mr. Goff with regards to the intent of the Zoning Regulations making nonconforming properties become more conforming and that in this situation, there is opportunity for compromise. He indicated that his clients would support an application that moved the deck three feet as previously proposed.

Attorney Case indicated that the current boundary line jut-out is a result of recently concluded litigation involving a boundary line dispute. According to Attorney Case, the neighbors have a history of encroachment disputes and a three foot reduction in the deck would bring it away from his client's property which would serve to reduce the risk of any future encroachment.

Ms. Bonnie Flattery, 116 Workcoeman Road, expressed her support for a three foot tapering of the deck.

Mr. John Flattery, 116 Workcoeman Road, described to board members an incident that occurred when Mr. Kayser had contracted workers to replace a section of railing on the deck. At one time, a portion of the railing was taken down and it was dropped or thrown onto the Flattery's property. A photograph was provided showing a previously existing fence of the Flattery's as well as a piece of Mr. Kayser's railing on his neighbor's property.

Mr. Paul Griffin asked how long the deck has been in this close proximity to the Flattery's property. Ms. Flattery responded that it was sometime in the 1980's that the deck was constructed.

Ms. Rayno asked Mr. Kayser how long he has owned the property. Mr. Kayser responded about twenty years. Ms. Rayno clarified that the deck was encroaching when he purchased it. He indicated that it was.

MOTION: Mr. Griffin, Mr. Goff second, **to close the public hearing in the matter of Stephen M. Kayser & Vicki L. Radford Kayser, 122 Camp Workcoeman Road, Special Exception for demolition and reconstruction of a nonconforming deck; unanimously approved.**

2. PENDING APPLICATIONS:

A. Stephen M. Kayser & Vicki L. Radford Kayser, 122 Camp Workcoeman Road, Special Exception for demolition and reconstruction of a non-conforming deck.

Mr. Griffin reported to fellow board members that he has been reviewing Section 7.1.B.3 of the Zoning Regulations that focuses on Nonconforming Structures. Under the Special Exception criteria set forth regarding voluntary demolition, Mr. Griffin opined that the only criterion that the application may have issue with is with subsection d. Mr. Griffin reviewed a through c, and could only see a reason for rejecting the application possibly under d.

Mr. Chappel pointed out that while the deck has been in its present location for forty or so years, it's unlikely that this application falls out of line with the criterion as set forth in subsection d: "such replacement building or structure is in harmony with the scale and character of the neighborhood." Mr. Griffin and Ms. Rayno concurred with this assessment.

Mr. Goff reiterated his comments from earlier that he thinks one of the duties of the board is to seek compromise when presented with a nonconforming piece of property. He agrees with the compromise that the Flattery's have discussed. By beveling the deck 30°, it would allow the applicant to replace his deck, was a reasonable compromise, and would bring a nonconforming property closer to conforming, according to Mr. Goff.

MOTION: Ms. Rayno, Mr. Griffin second, in accordance with the section 7.1.B.3 of the Zoning Regulations, we hereby issue this Special Exception to allow the demolition and rebuilding of the deck on the lake-side of the home at 122 Camp Workcoeman Road to the original dimensions of 7 feet deep by 26.55 feet wide as per the plans submitted entitled, "Property Survey Prepared for Stephen M. Kayser and Vicky L. Radford Kayser, 122 Camp Workcoeman Road, New Hartford, Connecticut" prepared by David J. Little, LLS, Torrington, Conn. dated August 20, 2011, Revised September 26, 2014 and further, in approving this application, we have determined that the application does not increase any nonconformity in height or yard requirements. We also determine that with the issuance of a building permit, the deck will be in compliance with applicable regulations. Furthermore, we have determined the new deck will be in harmony with the scale and character of the neighborhood; Ms. Rayno, Mr. Griffin, Mr. Chappel in favor, Mr. Goff, Mr. Schaufler opposed, motion failed. (Motion failed to receive necessary four votes for approval)

3. NEW APPLICATIONS:
None.

4. APPROVAL OF MINUTES: September 17, 2014

A modification contained in the September 17, 2014 Minutes, attempting to correct the August 20, 2014 Minutes of Lew Chappel's board member status was incorrect. Lew Chappel was elected on November 5, 2013 as a regular member to the Zoning Board of Appeals for a term commencing in November, 2014. Presently, he is still an alternate member from the election of November 3, 2009, wherein he was elected as an Alternate for a five year term.

MOTION: Ms. Rayno, Mr. Griffin second, to approve the minutes of the September 17, 2014 regular meeting as amended; unanimously approved.

5. OTHER BUSINESS PROPER TO COME BEFORE THE BOARD.

1. Discuss septic requirements for new construction.

Mr. Sadlowski reported that he had spoke to Pat from Farmington Valley Health District (FVHD) regarding the state health code as it relates to existing building lots and septic system requirements. A secondary, or reserve septic area, is not a requirement of existing building lots although the state health code does indeed require it on a new lot, Mr. Sadlowski relayed to the board. Mr. Sadlowski indicated that Pat from FVHD would

be forwarding a correspondence to the board in this regard but was unable to have one ready for this evening's meeting.

Mr. Goff indicated that he would like to review this letter as well as review the code itself. He indicated that he has concerns with failed septic systems in the lake area absent the reserve septic area requirement in this area.

MOTION: Mr. Griffin, Mr. Chappel second, to adjourn the meeting at 8:03PM; unanimously approved.

**Respectfully submitted,
Pam Colombie
Recording Clerk**