

HAMPSTEAD BOARD OF ADJUSTMENT MINUTES  
DECEMBER 7, 2022

**DRAFT**

Members present- Hank Riehl, Randy Clark, Proc Wentworth, Karen Hanides and alternate Jaye Dimando

A copy of the Posting Notice and abutters' notice are a part of these minutes.

The first request in front of the board was to allow a rehearing of the Mary Margaret Burke decision to permit construction of an addition at 29 Ells Rd. The request for a rehearing was continued from November, for lack of a full board. There were two requests – from Robert Hilse and Karen Moriarty. The chairman said the two requests would be taken separately. He read from the Handbook the procedures for rehearings. He said if the board's decision was considered unlawful or unreasonable, they may reconsider their decision. He announced that this is a public meeting but not a public hearing so there were no postings or notices and there would be no input from abutters or the applicants. He said both applicants had met all deadlines for filing. The board is not required to grant a rehearing. There should be new evidence that was not available at the original hearing.

Randy read the application letter from Robert Hilse who stated the proposed addition would block his view and potentially devalue his property. Karen said she didn't see any new evidence and she wished they could view the property. Randy agreed and said he didn't see any problem with the board's initial decision. Hank said he saw nothing to warrant a rehearing. Proc said he didn't hear anything different. Jaye said she would have voted to deny at the first hearing and saw no new evidence now. Hank questioned – but did we vote wrong? Randy made a motion to approve the request for a rehearing for Robert Hilse. Proc seconded and the vote was 3-2 to grant the rehearing with Hank and Randy voted in opposition. The rehearing will be Thursday, Dec. 29. It was determined that the application for a rehearing by Karen Moriarty was moot. Representative Dave Foucault agreed and said he would take back the box full of information he left with the secretary and present his case at the rehearing.

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## JOCK & MOE, LLC 3/114

The request was for a variance to construct a replacement deck too close to the rear and side lot lines at 30 Summer Street. The applicant gave a history of the property which his parents purchased in the 1960s. The house was built in 1967 on a block foundation. He said he spent every summer there since he was a child and has a deep appreciation for the lake.

In April, 2022, the board granted his request to raise the house up 4 ft., without effecting the footprint. He added a foundation. There is a new septic system and he said a drainage problem was mitigated. The proposal was for a 10 x 32 ft. deck on the west side. The deck off the back does not meet the setbacks. The old deck has been torn down. Karen asked if the front was a porch. The applicant said it was a screened porch in the 80s but is now part of the house. The new foundation went under it. A walk-out basement was approved.

Karen asked how close to the lake it would be. The applicant said the stairway will be set back and the stairs will be closer to the lake. The deck will be on the second floor. He said there is a Shoreland Permit in place for the original plan. He said he didn't know he had to go back to them for this new plan, but only had to go to the Board of Adjustment. Hank said that since it will be within 50 ft. of the lake the State will need to act on it. He said this board can't authorize what the State will require. Randy agreed and said he would be hesitant to grant a variance because the State has jurisdiction.

The current setback is 19.6 ft. off the corner. The proposed will be 15 ft. The applicant went over the five criteria for a variance. He said it won't alter the character of the neighborhood. He said it is a non-conforming lot and no configuration where a variance wouldn't be required. He said it is not contrary to the ordinance and there would be no diminution of property values. He said it wouldn't have to be 32 ft. He has another design.

Hank asked about hardship. He said the property is no different from others in the area. The applicant said it is a non-conforming lot that is unique because there is a house on it. He said he can't build a deck and stairs in the same footprint without a variance because it's higher. He said the land has changed on the road side because of the septic was installed.

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### PUBLIC COMMENTS

Kathy Kennedy, 24 Summer St., said she is opposed. She said the old 6 x 6 ft. deck has already been removed. She said the frontage on the lake is 75 ft. She said there are several discrepancies in the application. The deck will be 14.4 ft. from her lot line – not 18.4 ft. She added the April 6, 2022 hearing stipulated there would be the same footprint with a walk-out. She said the State would not allow this without a Shoreland Permit. There is now a stone patio – also without a permit, she said. She said there is a fence on her property and a dock which is 100 percent on her property.

Ms. Kennedy went over the criteria. She said it will diminish neighboring properties. She said special conditions can't be created by the applicant.

Jeff Hatch, not an abutter or resident, said he was only speaking for a friend. He said there was no need for the variance – only a want. He said there was nothing different about this property from others so there was no hardship. He said it doesn't meet all the criteria.

Aaron Tekin , 44 Island Pond Rd., said the footings for the deck have already been poured and covered over. He showed photos taken November 22, when the work was started.

Diane Paquette, co-owner of the 24 Summer St. house, said she is a realtor and has lived there since 1961. She said property values are very much affected when encroaching on someone's property. She said there was no permit from the DES for the patio and also no permits for the retaining walls and driveway. She said the GIS map shows the frontage to be 75 ft. and not 85 ft. She said runoff will come between the two properties.

Applicant, Mr. Ambrefe, said he had a problem with Jeff Hatch speaking, since he lives in Salem, NH. He said the fence and dock have been there for 40 years and have been replaced many times in the same location. He said there will be no change in privacy and showed photos from two views. He said there isn't a significant difference. He said he asked the contractor to put in the pilings in the event the variance is granted. He said he mitigated the runoff and gutters are in. He said the project is not over and he is trying to do the right thing. He said he is trying to come up with a solution with the abutters. He's asking for reasonable use of his property. He invited the board to come and walk the property.

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Hank asked the interior height of the ground floor. The applicant said 8 ft. and it is unfinished and only used for storage. He told the applicant that he said he couldn't replace the landing and stairwell but that's choices he made. Karen said it could be a window instead of a slider.

The applicant asked the board if they could point out any properties around the lake without decks. Hank said we don't require permits but the State might. The applicant said he took it up with Kris.

Diane Paquette said the applicant could have put in a window instead of a double slider unless he was planning on a larger deck. The applicant said there was already a slider there. He said it's a reasonable request to be able to access that floor.

Kathy Kennedy said that at the previous hearing the board asked engineer, Charlie Zilch, about access to the second floor and he said it would just be a set of stairs.

The applicant said there has to be two means of egress.

### **BOARD DISCUSSION**

Karen said there is nothing unique about the property. Hank agreed. He said it's an elevated deck so it is more visible to abutters. He said it does not meet the spirit and intent of the ordinance. Jaye agreed it is a self-imposed hardship. Proc had no comment. Randy said there is no hardship and it didn't meet spirit and intent. He said he had no problem with a 6 x 6 ft. deck but he had a problem with 10 x 32ft.

### **THE VOTE**

Randy made a motion to approve the request for construction of a deck too close to two lot lines. Karen seconded. Members filled out their worksheets. The vote was unanimous to deny the request. Randy made another motion to deny the request for construction of a deck too close to two lot lines. Proc seconded and the vote was unanimous to deny that motion.

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## **ANDREA PETERS 8B/59**

The request was for a Special Exception to permit construction of a 600 square ft. detached garage at 31 Shore Dr. The hearing was continued from November. The applicant lives at 32 Shore Dr. and also owns the lots at 31 Shore Dr. and 24 Shirley Street. She said it is a lot of record and the proposed garage meets all setbacks and will not cause any diminution to property values. She will be taking down an old shed and its concrete pad. It will have a 5 ft. pitch with no plans for storage. It will not be a dwelling. Karen questioned why it didn't require a variance. She read from a portion of the town's zoning. The applicant said the only wetlands are on 24 Shirley St. There are no wetlands on 31 Shore Dr. Hank agreed the wetland setback does not apply.

Karen said the shed is grandfathered. She asked the applicant if she would be combining lots. Mrs. Peters said she is not because then there would be wetlands on it. She said a garage is not a dwelling. Hank said that's why the lots don't have to be combined. He added that's why we're only talking about diminution of property values.

Jaye said she is not an abutter but a neighbor. She said there's a culvert on Matthews Dr. Mrs. Peter said the driveway will be paved.

**PUBLIC COMMENTS** - Lloyd Blackadar, 30 Shore Dr., told the board he lives across the street from the proposed garage. He said the lot is higher and when pavement gets put in, he worries about runoff. He said the water will flood his cellar. He said he would be flooded.

Mrs. Peters said they will not be clearing the entire lot. Not all the trees will come down. She said she wouldn't do anything that would hurt her home.

Proc said there should be a ditch line along Shore Dr. and that she should talk to the Road Agent.

Karen said Matthews Dr. has a lot of water coming down it. Mrs. Peters said she can't be responsible for the Town's problems with the road. She said she intends to improve the situation. Her driveway will be 45 ft. long with trees around it.

Jaye said the garage will sit between the two culverts. She said there's a running brook under Shore Dr. between the property and into the lake. She said the water has to go somewhere if directed properly.

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Hank said if a legal adhering structure causes a runoff issue, it's the Town's job to assuage it. He said the board is not road engineers. He said it's not right to turn down an otherwise compliant request because we think the Road Agent can't do his job. Proc said the applicant will need to get a driveway permit.

Chris Murray, 29 Shore Dr., said she is concerned about water. She doesn't want that amount of water ending up in her basement. Hank asked – wouldn't Kris be watching drainage matters. Mrs. Peters said they would have to culvert it and work with the Town. She said she is willing to work with the Town to fix culvert issues.

Hank asked if the board is doing Kris's job by worrying about this – laying out a driveway and swales? He said it should be Kris or the Road Agent's responsibility.

Jaye said when the lake is tested it is heavy with fertilizer – not the Peters' but everybody's.

Mrs. Peters said she will be helping with the health of the lake – removing the existing broken pavement and shed. Hank said the new surface could be a permeable surface.

Jason Houle, 6 Shirley St., said this situation has been going on for a year and it once named wetlands. He asked where the wetlands went. Mrs. Peters said it was not listed as wetlands. She said a wetland survey was done on all three lots. Mr. Houle said he has a petition from letters and a letter from the Conservation Commission stating nothing should be built on the two lots. He also had a letter from DES re: areas of contamination.

There was a letter from Kris stating the request required a Special Exception. Karen still questioned why it doesn't need a variance.

Chris Murray said the water will flow downhill to her and she wants it noted in the file.

Mrs. Peters said she received the same letter as everyone else about forever chemicals.

Mr. Houle said a shed doesn't have a foundation. He said the applicant knew the use of the property when it was purchased, that it was "unbuildable".

Mrs. Peters said members of the Conservation Commission had entered her property twice without her knowledge or permission. She said this is a totally separate project on a totally separate lot.

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### BOARD DISCUSSION

Karen said members should walk the site before the vote. Randy said the Road Agent needs to see the drainage plan. Hank said the applicant is removing a shed and a substantial amount of concrete and the proposed garage is in a more conforming spot. He said he's uncomfortable designing culverts. Karen said she's not against it (the project) but she wants to take a look and talk to the Road Agent.

### THE VOTE

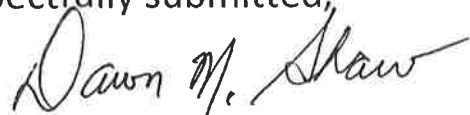
Randy made a motion to permit construction of a 600 square ft. detached garage, per plan submitted, with a 40 ft. paved driveway and the condition the applicants work with the Road Agent for drainage issues.

Hank suggested maybe it should be a motion to continue. Randy withdrew his motion. Jaye made a motion to continue the hearing to December 29, 2022 with the intent to conduct a site walk and talk with Kris and the Road Agent and property owner. Karen seconded the motion. Mrs. Peters said she has a letter from a land consultant stating that the wetlands are on the other lot. She reminded the board that her initial request to construct a house was withdrawn – not denied. She agreed to allow the site walk on her property. Hank, Jaye and Karen voted to continue the hearing. Proc and Randy voted against.

### OTHER BUSINESS

Minutes – Randy said the Nov. 2 minutes did not list the applicants' names who chose to continue to November because there was only a four-member board. Proc made a motion to accept the amended minutes. Jaye seconded and the vote was unanimous to accept.

Respectfully submitted,

A handwritten signature in cursive script, reading "Dawn M. Shaw". The signature is written in dark ink and is positioned below the "Respectfully submitted," text.