

**Lincoln Zoning Board of Adjustment
Wednesday April 7, 2021 – 6:00PM
Lincoln Town Hall - 148 Main Street, Lincoln NH**

Due to the current COVID-19 situation, the Town Office is closed to the public. This meeting will be available only via the Zoom Meeting Platform to allow for town wide participation. The public is encouraged to participate remotely using ZOOM and video uploaded to YouTube immediately following the meeting.

Present: Chairman Paul Beaudin, Vice Chair Ray D'Amante, Member Delia Sullivan, Member Jack Daly, Member Myles Moran and Alternate Susanne Chenard.

Members Excused: None

Members Absent: None

Staff Present: Planner Carole Bont and Fire Chief/Health Officer/Code Enforcement Officer/Zoom Host & Moderator Ron Beard (all via ZOOM)

Consultants: Town Attorney Peter Malia and Town Engineer Ray Korber

Guests: Applicant's Contractor Jim Stukos, and abutter Ben Rodgers (directly below the Carbonneau's property).

I. CALL TO ORDER

Chair Beaudin called the meeting to order at 6:00pm

II. CONSIDERATION OF MEETING MINUTES

“To approve the minutes of the March 31, 2021 ZBA meeting as presented.”

Motion: Member Daly

Second: Member D'Amante

Motion carries.

III. NEW BUSINESS

**Request for a Variance for a Retaining Wall in the Setback Area [Var 2021-03 M121 L002
Carbonneau – Retaining Wall in Setback Area]**

Appellants/Property Owners: Daniel and Michelle Carbonneau
60 Boulder Road, Wellesley, MA 02481

Engineer: Richard E. Bushnell, P.E.
Principal Engineer, Civil Connection, LLC.
38 Edwards Drive, Gilmanton IW, NH 03837

Surveyor: Harry J. Burgess/Jacob Burgess
Pioneer Land Surveying, LLC
192 Hibbard Road, Bath, NH 03740

Subject Property: 20 Crooked Mountain Road in South Peak Resort (Map 121, Lot 022)
The parcel is in the General Use (GU) District. The parcel is part of the South Peak Community Association.

Proposal: Appellants Daniel and Michelle Carbonneau, are requesting a variance for their property at 20 Crooked Mountain Road in South Peak Resort (Map 121, Lot 022) concerning Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Subparagraph 4 (Dimensional Chart) of the Land Use Plan Ordinance (LUPO) to put a retaining wall in the fifteen-foot (15') setback area. Appellants' house is starting to shift due to a failed retaining wall behind the house that supports the land on the rear slope of the property. The purpose of the new retaining wall is to provide structural support to the existing retaining wall and the home. The failed retaining wall is causing foundation settlement, cracks in walls, shifts in window casings, separation of molding, shifts in deck piers, movement in deck framing, etc. The proposed support retaining wall will be located in the setback area. The parcel is in the General Use (GU) District. The parcel is part of the South Peak Community Association and the South Peak Community Association supports this application. Appellants need a variance to put their new retaining wall greater than four feet in height into the 15-foot setback area.

Application is Complete:

Planner Bont stated that the application is considered to be complete.

"To consider the above-mentioned application as complete."

Motion: Member Daly

Second: Member Moran

All in favor.

Planner Bont informed the board that the Carbonneau's have spoken to their neighbors. A letter of support has been received from an abutter as well as the letter from the homeowner's association.

Presentation:

Appellant Paul Carbonneau informed the Board that they put an offer on the house at 20 Crooked Mountain Road in February 2020. During the inspection process it was discovered that there were cracks and shifts in the window casings. The exterior supports on the deck piers were shifted and the decking appeared to be shifting away from the house. The inspector promptly ended the inspection and recommended that they consult with engineers.

Appellant Paul Carbonneau said a Geotech engineer as well as a structural engineer were hired to look at the property and both agreed that the house was settling particularly in the area within three feet of the retaining wall. The engineers made suggestions to reinforce the house and one

of the recommendations was to reinforce the retaining wall.

Appellant Paul Carbonneau said the sale of the property went through in May of 2020. A survey of the property was done (as there were no property markers in place) and it was found at that time that a corner of the retaining wall was in the setback. Engineers recommended that a new retaining wall be built to support the current loose boulder wall. This new wall will be constructed using engineered blocks.

ZBA Questions:

Chairman Beaudin stated that if a variance is granted, the applicant should include erosion control measures, language outlining that the state building codes have been met as well as a construction control affidavit (prior to a land use permit being issued) in the structure plans.

Planner Bont stated that the applicant only needs a variance from the ZBA and then the applicant would move forward with the town's permitting process that includes those things.

Town Engineer Korber added that there is a pre-construction control affidavit that the design engineer for the retaining wall has to sign off on before issuance of the Land Use Permit and a post construction control affidavit that the engineer has to sign off on before final approval and issuance of the Land Use Compliance Certificate. Additionally, he added that it is important that the engineer of record is on site periodically throughout critical times of the construction of the wall so he/she can sign off on the final post-construction control affidavit. Further, erosion and sediment control measures should be outlined on the site plans to protect abutting property owners from any adverse impact from the construction.

Members D'Amante and Daly have both visited the site. Member D'Amante stated that there is a substantial hardship on this property and that the house is in danger if something is not done quickly. This is a time sensitive situation.

Member Sullivan added that she also conducted a site visit and with the lack of this season's snowfall and rain, the brook next to the home concerns her. The stormwater runoff must be addressed especially when the brook increases in volume.

Appellant Carbonneau did confirm that there would be an underdrain at the bottom of the wall.

Town Engineer Korber stated that the access to do the wall construction is via an abutting property. Mr. Korber recommended a temporary construction easement be drafted.

Town Engineer Korber also questioned whether the Board thought a bond should be required.

Attorney Malia stated that permission from the neighbor is really the property owners' responsibility and he did not see that an easement would really be necessary.

Abutter Rodgers stated that he is very much in favor of supporting the Carbonneaus and helping them wherever necessary to complete this project.

Attorney Malia recommended reviewing the findings of fact that Planner Bont drafted and voting on those as well as the variance requirements and then the conditions of approval.

"To open the hearing to public comment."

Motion: Vice Chair D'Amante

Second: Member Daly

All in favor

Fire Chief Beard stated that the Board may want to have the applicant take note of how much land is disturbed on the neighbor's property so that when they apply for a land use permit to build their home, the wall does not adversely affect them as they move forward with construction.

Appellants' Contractor Jim Stukos said he thought it could be about 25-30 feet of disturbance. Further discussion about site disturbance ensued.

"To close the hearing to public comment."

Motion: Member Daly

Second: Member Moran

All in favor

Review of Criteria

1. Granting the variance would/would not be contrary to the public interest.

Appellants state that granting the variance would not be contrary to the public interest because it will not alter the essential character of the neighborhood nor would it create any harm to the public. It will offer improvements on the property which will favorably affect safety concerns and be in the best interest of the general public and the neighboring properties.

"To accept that the proposed variance is not contrary to the public interest as submitted."

Motion: Vice Chair D'Amante

Second: Member Moran

All in favor.

2. Granting the variance would/would not observe the spirit of the ordinance.

Appellants state that granting the variance would be in the spirit of the ordinance as there will still be sufficient space between the home on the subject property and the neighboring lots. The variance is not to expand the footprint of the home and will not result in overcrowding in the neighborhood.

"To accept criteria two as submitted."

Motion: Vice Chair D'Amante

Second: Member Moran

All in favor.

3. Granting the variance would/would not do substantial justice.

Appellants state that granting the variance would do substantial justice because the granting of the variance will allow the property owner to address the safety concern on the property that could impact not only the subject property but the adjacent properties as well. Allowing the variance and proposed retaining wall would have little impact on the general public and any impact is outweighed by the safety measures that the variance and the retaining wall will address.

"To accept criteria three as submitted."

Motion: Member Daly

Second: Vice Chair D'Amante

All in favor.

4. Granting the variance would/would not diminish the values of surrounding properties.

Appellants state that granting the variance would not diminish the values of surrounding properties for the following reasons. The variance is being requested to allow for use which is consistent with the existing property and which would have no impact on the surrounding properties including their value or enjoyment. There is no overcrowding between the existing construction and the proposed construction on the abutting property.

Member Sullivan mentioned that this may be the appropriate criteria to address the stormwater.

Attorney Malia added that the Board can approve the criteria with the condition that the applicant provide an erosion and sediment control plan to the satisfaction of the Town's engineer.

"To accept criteria four as submitted with the condition that the applicant provide an erosion and sediment control plan to the satisfaction of the Town's engineer. "

Motion: Member Sullivan

Second: Vice Chair D'Amante

All in favor

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would/would not result in an unnecessary hardship.

Appellants state that owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance will result in unnecessary hardship because no fair and substantial relationship exists between the general purpose of the ordinance provisions and the specific application. The applicant has suggested that the variance in the rear of the subject property and the rear of the adjoining property would have no impact on the general public but could result in unnecessary hardship if the subject property continues to experience damage associated with the movement of the underlying land.

"To approve criteria five as written."

Motion: Member Sullivan

Second: Vice Chair D'Amante

All in favor

Member D'Amante added, that the proposed use is a reasonable one because its being sought to support an existing structure and to provide stability and safety to said property that will protect said property along with the adjoining property.

"To accept as written."

Motion: Vice Chair D'Amante

Second: Member Daly

All in favor

"To insert the Findings of Fact drafted by Planner Bont into the approval of the variance."

Motion: Vice Chair D'Amante

Second: Member Daly

All in favor

The variance is granted.

IV. ADJOURNMENT

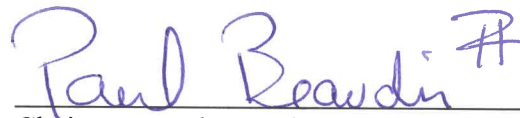
"To adjourn at 7:00pm."

Motion: Member Daly

Second: Vice chair D'Amante

Motion carries unanimously.

Respectfully submitted,
Recording Secretary
Brook Rose



Chairman Paul Beaudin

Date Approved: July 7, 2021