

APPROVED

**ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING
Wednesday, November 17, 2021 – 6:00PM
Lincoln Town Hall, 148 Main Street, Lincoln NH**

Due to the current evolving status of COVID-19, this meeting will be a *hybrid* meeting to be presented both in person with social distancing encouraged (space limited to 8-12) and via ZOOM Video Conferencing to allow for town wide participation. A quorum of the members of the board will have to be physically present at the meeting. All others are encouraged to attend via ZOOM.

Join Meeting via Zoom:

<https://us02web.zoom.us/j/81367941467?pwd=ZFgyMkhxRFVGemlzb1R4STRyb1J3QT09>

Meeting ID: 813 6794 1467

Passcode: 665626

Or dial by your location 1-929-205-6099 US (New York)

I. CALL TO ORDER

Members Present: Jack Daly, Vice Chair Ray D'Amante (via Zoom), Member Delia Sullivan, Member Myles Moran (via Zoom), Alternate Susan Chenard and Alternate Jonathan (Jon) Ham

Members Excused: Chair Paul Beaudin

Motion to seat Jon Ham as the alternate and also to nominate him for Chairman for the meeting by Jack Daly

Second Member Myles Moran

All in favor

Staff Present: Fire Chief & Code Enforcement Officer/Health Officer/Zoom Host and Moderator Ronald Beard, Planner Carole Bont, Planning Board Recorder Judy Sherriff (via Zoom).

Guests:

- **Brian G. Norton, (ABUTTER)** non-resident, of 20 Gray Road, Campton, NH 03223, Vice President of Operations at Loon Mountain Resort, 60 Loon Mountain Road, Lincoln, NH, 03251; Loon Mountain Resort is owned by Boyne Resorts, 3951 Charlevoix Avenue, Petoskey, Michigan, 49770 (via ZOOM).
- **Kristen Mansharamani, (APPELLANT)** resident of 33 Governor's Lane, PO Box 842, Lincoln, NH 03251-0852 and with Vikram Mansharamani d/b/a Kelan Torloonkai, LLC, 33 Governor's Lane, PO Box 842, Lincoln, NH 03251-0852 owns 33 Governor's Lane (Tax Map 124, Lot 026).

- **Joseph (Joe) P. Chenard**, (arrived very late) resident of 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and owner of:
 - 257 US Route 3 (Map 107, Lot 042)
 - 261 US Route 3 (Map 107, Lot 043)
 - US Route 3 #LO (Map 107, Lot 056)
 - US Route 3 #LO (WS) (Map 107, Lot 055)
 - US Route 3 #LO (Map 107, Lot 051) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 (WS) #LO (Map 107, Lot 044) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 045) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 048) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 046) (Owns with Peter C. Chenard – now deceased)
 - 11 Liberty Road (Map 107, Lot 061) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 053) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 047) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 050) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 049) (Owns with Peter C. Chenard – now deceased)
 - US Route 3 #LO (Map 107, Lot 052) (Owns with Peter C. Chenard – now deceased)

And Vice Chair of the Planning Board.

II. CONSIDERATION of meeting minutes from:

- July 7, 2021 (Present: Acting Chair Jon Ham, Vice Chair Ray D'Amante (via ZOOM), Member Jack Daly, Member Delia Sullivan, Member Myles Moran (via ZOOM), Alternate Susan Chenard.

Motion to approve as amended by Member Jack Daly

Second by Member Delia Sullivan

All in favor

III. CONTINUING AND OTHER BUSINESS (Staff and Zoning Board Member/Alternates).

IV. NEW BUSINESS

6:00 PM. Request for an Equitable Waiver of Dimensional Requirements and a Variance to allow a building to remain ~~and expand~~ within both the side and rear 15-foot setback areas.

[SBA WDR 2021-04 M124 L026 Mansharamani – Waiver of Dimensional Requirements & Variance]

Property Owners & Appellants:

Kristin & Vikram Mansharamani
d/b/a Kelan Torloonkai, LLC
33 Governor's Lane
PO Box 842
Lincoln, NH 03251-0852

Property Location: 33 Governor's Lane (Tax Map 124, Lot 026) in Rural Residential (RR) District where front, side and rear setbacks are fifteen feet (15').

Proposal:

Appellants Kristin & Vikram Mansharamani, 33 Governor's Lane, PO Box 842, Lincoln, NH 03251, d/b/a Kelan Torloonkai, LLC, request an **Equitable Waiver of Dimensional Requirements and a Variance** from the zoning ordinance [Land Use Plan Ordinance (LUPO)], Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule) "Dimensional Chart" to allow a building within both the side and rear 15' setback areas. Subject property: 33 Governor's Lane (Tax Map 124, Lot 026) in Rural Residential (RR) District.

The 1st violation by previous owners occurred in 1987 when the house was constructed into the side setback one (1) year after the LUPO was adopted in 1986. Several additional violations by successive owners occurred in successive years when unpermitted additions were made increasing both the size of the home & decks. One incomplete application for a building permit for two (2) decks was submitted in 2003, but application was never completed and no permit issued. Portions of the decks were built in the side and rear setback areas without variances and also were built partially on abutting land of Loon Mountain Recreation Corporation without permission from the abutting property owner.

New owners and applicants propose to remove the substantial portions of the decks located on lands of the abutter & in setback areas, but not all. They propose to add to decks already in the setback areas, but not on abutter's land.

The violation has existed for thirty-four (34) years with no enforcement action, including written notice, being commenced by the Town. The nonconformity was discovered by the Town when the applicant submitted an application for a Land Use Permit. No due diligence was done by the new owners.

Presentation

Appellant Kristen Mansharamani explained that initially they were applying for a Land Use Authorization Permit to add a garage to the front of the house and raise the roof line on the back of the house. In the process, they learned that the existing deck and part of the house were over the fifteen-foot (15') front and side setback lines and a portion of the deck was actually encroaching over their property line onto their abutter's property.

Appellants Mansharamani are now proposing to take off all of the side decking, in a way that would make structural sense from where the joists are, etc. This will solve the problem of any

part of the structure being over the property line. However, they would like to retain the back deck that does encroach into the side setback area. The line for the back deck matches up with the line of the rear of the house. They also would like to keep a small piece of the structure in the front that encroaches (less than one foot) into the front setback area.

Appellant Kristen Mansharamani said once they learned of their house's encroachment over the property line, they decided to try to make the problem better by proposing to remove all of the decking on the side of the house located in the setback area and everything that is encroaching over Loon Mountain Recreation Corporation's property line. The deck in the back of the house that will remain in the setback area is located in a place that no one else sees it. The proposed new garage will be located on the other side of the house, away from the side setback area where there is plenty of room within the building envelope. The garage will actually fill in a "weird hole" in the structure which will bring line of the house and garage into level across the front. To summarize she would like to keep the existing back deck (a small portion of which is in the side setback area) and the existing front deck (a small portion of which is in the front setback area) and ask for full forgiveness for the house.

Discussion:

Planner Bont clarified that what the Appellants Mansharamanis are proposing will improve the situation (i.e., making it more compliant with the zoning ordinance).

Member Daly added that he took a look at the house and also noticed in the documents that the house was built in 1987. Appellant Mansharamani said she believes that the build date is correct and has tried to look that information up.

Planner Bont explained that on the Town's property assessment cards it says the house was built in 1987 and there was a permit issued that year for a house.

Member Daly stated that in his opinion the house appears to be older than 1987 based on the exterior construction (with T1-11 or shiplap pine); he thinks maybe it was built in the 1970s. He added that mistakes are made on the property assessment cards re: actual build dates. The Town had his house as being built in 1999. When he appealed, he learned that it had actually been constructed in 1989.

Member Daly went on to say that there is a deck on the right-hand side that the Appellants Mansharamani are proposing to rip off. Taking off the deck from the side will no longer constitute a violation.

Planner Bont explained that the Mansharamanis would like to keep the square section of decking in the back. A small portion of the rear deck, on the right side facing the house, will still be over the fifteen-foot (15') side setback line. They would like to keep the house as is; a portion of the building on the right-hand side is over the side setback line. There is also a tiny piece on the front of the house that is also slightly over the front setback line. There is no plan, at this time, to fix that issue. Appellants Mansharamani are asking for forgiveness – requesting an equitable waiver of the dimensional requirements for the encroachment of:

- the house into the side setback area;

- the rear deck into the side setback area; and
- the front deck into the front setback area.

Planner Bont estimated that the front deck that is to remain is over the front setback line by approximately one (1) foot.

Vice Chair D'Amante said he believes there is also a stairway off-site that will need to be removed. Ms. Mansharamani responded that the stairway shown on the survey does not belong to the Mansharamanis, but belongs to Loon Mountain Recreation Corporation (Map 126, Lot 020).

Fire Chief Beard (who used to work for Loon Mountain Recreation Corporation) clarified that the stairs being referred to were put in by Loon Mountain Recreation Corporation to provide access to the ski slopes for residents of [Westwood Acres and] those living on Governor's Lane.

Member Daly asked Appellant Mansharamani if the house was a full-time residence. Appellant Mansharamani replies "yes" and explained that whether the house was built in the 1970s or 1980s, they are planning to redo the heating, plumbing, and the electrical systems also.

Vice Chair D'Amante asked Appellant Mansharamani for confirmation that they plan to:

- Remove the ramp that encroaches onto Loon Mountain Recreation Corporation's property
- Remove the whole side deck that leads to the ramp that is the side setback area.

Appellant Mansharamani confirmed that all of these issues were created prior to her acquisition of the property.

Vice Chair D'Amante confirmed with Appellant Mansharamani that the proposed changes make the real estate MORE in conformance with the Land Use Plan Ordinance (zoning ordinance). Member Moran agreed that the proposed changes will bring the property more into conformance with the zoning requirements than it will be as it currently exists.

Solicited Comments from Vice President Brian Norton of Loon Mountain Resorts (Loon Mountain Recreation Corporation)

Member Daly asked Loon Mountain Recreation Corporation ("Loon") Vice President Brian Norton if he had any concerns as an abutter.

Loon Vice President Norton replied that he thought there was one matter for the ZBA to consider. (Norton said he wanted to go up there to view the property today, but he did not have time.) Loon Vice President Norton said he would want the ZBA to consider a potential project the neighbor across the street from the Mansharamani property was talking to Loon Mountain Recreation Corporation about.

Jaime A. Rome & Leila M. Rome, 88 Laurel Road, Chestnut Hill, MA 02467], own 36 Governor's Lane (Map 124, Lot 027) across the street from the subject property. Loon Vice President Norton said Jamie Rome has expressed to Loon Vice President Norton an interest in having Loon Mountain Recreation Corporation raise the grade of the private road known as

“Governor’s Lane” (owned and maintained by Loon Mountain Recreation Corporation and part of Map 126, Lot 020) to accommodate the elevation of Rome’s house.

Loon Vice President Norton said the house “down elevation” from the Rome’s lot, he believes, has had some water issues that possibly were related to the Rome Family house while construction on the Rome house was occurring. Loon Mountain Recreation Corporation is caught in the middle between those two (2) neighbors. His concern is that the water issue be taken into account.*

**Notes from Town Digital Files:*

2017-11-06

Andrew Noyes called from Loon Mountain Recreation Corporation.

The work being done to build the house on Map 124, Lot 027 has caused drainage problems resulting in damage to Governor’s Lane and damage to the house at 25 Governor’s Lane (Map 124, Lot 025) owned by Adam and Gail Slifka.

Loon Mountain owns and maintains the private road Governor’s Lane.

He was looking for any contact information we might have for Adam and Gail Slifka. We only had the mailing address where we send tax bills.

*Adam & Gail Slifka
7 Fall Lane
Canton, MA 02021*

I wonder if we should be checking to see what the damages are up there. They did not need a Stormwater Management Plan because the lot was relatively large.

According to Andrew, there were damages to the road – Governor’s Lane – and the house below and to the left.

Speaking as an abutter, Loon Vice President Norton said he does not have a problem with as far the Mansharamani’s encroachment into the setback areas as long as Loon Mountain Recreation Corporation can continue to maintain the road (Governor’s Lane) as needed.

Member Daly noted that the neighbor (Jamie & Leila Rome) across the street appears to have a driveway that is part of the Governor’s Lane roadway. Loon Vice President Norton replied that he has been working with a surveyor to establish where that roadway is. He agreed with Mr. Daly’s opinion that the Rome driveway is already extended into the Governor’s Lane roadway. He can see the iron pipe marking one corner of the Rome property line. He believes the other corner marker is buried; however, he thinks he knows where it is. Rome made some grading changes already into Governor’s Lane to accommodate a change in elevation from the original plans because his contractor hit ledge during construction.

Fire Chief Beard confirmed that the Rome’s contractor did hit ledge during construction and mentioned that in the Rome Application for a Land Use Authorization Permit there should be a survey. Loon Vice President Norton will email Planner Bont requesting the survey on file.

Concerns from Homeowner About Proposal to Raise the Grade of Governor's Lane:

Appellant Mansharamani mentioned that the application for the attached garage itself does not have anything to do with the setback areas.

Appellant Mansharamani said she believes it would cause an issue for her if the road grade was raised above its current grade because, essentially, she would be coming [directly] off the street into the proposed garage. She noted the hill is pretty steep and raising the road grade would definitely be problematic.

Appellant Mansharamani also mentioned that there had been previous water issues in the house, but those issues may have occurred been during construction and they have not had any water problems with the road "as is". She thinks she would have issues if the roadway were raised. Loon Vice President Norton agreed. A raised roadway would make access to their property problematic.

Loon Vice President Norton added that he does not have an issue with the encroachment into the setback areas. He thanked her for improving the situation with regard to setbacks.

Loon Vice President Norton has expressed his concerns about the elevation of the roadway. As the roadway owner, he wondered about the issuance of a driveway permit for the Mansharamanis. He assumed they would need a new driving permit as part of their Land Use Authorization Permit.

Planner Bont replied that she does not think the Town will be issuing a new driveway permit for the proposed addition for the Mansharamanis unless the Mansharamanis decide to change the driveway or move the location of the driveway. They already have a curb cut for the driveway and a driveway.

Planner Bont asked Loon Vice President Norton how he would notify people if he decided to change the grade of the road. Loon Vice President Norton replied that they would notify everyone on the road, but he does not want to do any more than he has to. He was bringing the issue of the roadway up because there have been drainage issues further up the hill at the top of Governor's Lane. It was suggested to Loon that adding material and raising the grade down there could help with some of the other drainage issues up the road. Rex Caulder of Caulder Construction who was doing the excavation work for the Rome family had expressed their opinion to Loon Mountain Recreation Corporation that adding material to the road and raising the grade down there could help some of the other drainage problems up the road. He agrees it would help but he is not interested in rebuilding roads for no good reason.

Motion to open public comment by Acting Chair Ham.

No public comment.

Motion to close public comment by Jack Daly

Second by Member Sullivan

All in favor

Review of Criteria for an Equitable Waiver of Dimensional Requirements

1. Does the request involve a dimensional requirement, not a use restriction?

Acting Chair Ham polled the Zoning Board and they are all agreed, “yes”.

2. Has the violation existed for ten (10) years or more with no enforcement action, including written notice being commenced by the Town?

Application: The 1st violation by previous owners occurred in 1987 when the house was constructed into the side setback 1 year after the LUPO was adopted in 1986. Several additional violations by successive owners occurred in successive years when unpermitted additions were made increasing both the size of the home & decks. One incomplete application for a building permit for 2 decks was submitted in 2003, but the application was never completed and no permit was issued. Portions of the decks were built in the side and front setback areas without variances and also were built partially on the abutting land of Loon Mountain Recreation Corporation without permission from the abutting property owner.

Planner Bont confirmed that is what she found in the Town files; no enforcement actions including written notices were in the files.

Acting Chair Ham polled the Zoning Board and they all agreed, “yes”.

3. Was the non-conformity discovered after the structure was substantially completed or after a vacant lot violation has been transferred to a bona fide purchaser?

Application: The initial violation has existed for 34 years and each successive violation with no enforcement action, including written notice, being commenced by the Town. The nonconformity was discovered by the Town Planner when applicant submitted an application for a Land Use Permit. No due diligence was done by the new owners.

Planner Bont confirmed that the first violation has existed for thirty-four (34) years.

Acting Chair Ham polled the Zoning Board and they all agreed, “yes”.

4. Whether the non-conformity constitutes a nuisance or diminishes the value or interferes with the future uses of any other property in the area?

Application: These violations have existed for many years before they bought the property and no one complained or was unable to sell their homes or were unable to sell their properties because of the violations of the prior owners. They were not even aware of the violations.

Acting Chair Ham polled the Zoning Board and they all agreed that the nonconformity does not constitute a nuisance or diminish the value or interfere with the future uses of any other property in the area.

5. Does the cost of correction far outweigh any public benefit to be gained?

Application: We are proposing to make our home more compliant than in the past. We cannot move the house though.

Acting Chair Ham polled the Zoning Board and they all agreed, “yes”.

6. Was the violation an outcome of ignorance of the law or bad faith or a good faith error in measurement or calculation?

Application: They are new owners. They learned of the violations when they submitted their application to the Town for a Land Use Authorization Permit for an addition (not within the setback areas). After they learned of the violations, they modified their proposed plans and are removing much of the decks and the walkways that were in the setback areas. They would like to leave a portion of the deck that is in the side and front setback areas (the rear deck and some front decking) due to structural issues.

Planner Bont confirmed that the Mansharamanis are new owners. They only learned of the violations when they submitted their application to the Town for the Land Use Permit for the garage addition from her. After they learned of the violation, they proposed to modify their plans to make the building more compliant with the zoning ordinance. They will remove both the side deck and walkways in the setback areas; they will leave the rear deck partially in the side setback and the front deck in the front setback.

Acting Chair Ham polled the Zoning Board and they all agreed it was a good faith error.

Finding of Fact presented by Vice Chair Raymond D’Amante

1. Removing the ramp that was built beyond the property line, prior to their acquisition of the property, is an improvement to the site.
2. It has been confirmed that they are removing almost all of the deck that was built within the setback over the prior years and prior to their acquisition of the property.
3. The changes make the real estate and its improvements more conforming to the conditions of the applicable zoning ordinance.
4. The proposed additions are generally in compliance with the setback requirements of the

zoning ordinance except as discussed during the meeting and the removal of the encroachments as it relates to abutting land is an improvement as well.

5. Unique aspects of the home include abutting the non-residential area to the east that is recreational open land owned by Loon Mountain Recreation Corporation operated as a downhill ski resort.

Motion to accept the Finding of Fact by Member Moran

Second by Member Daly

All in favor

Motion to grant the Application for an Equitable Waiver of Dimensional Requirements by Member Daly

Second Member D'Amante

All in favor

Review of Criteria for a Variance

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

Application: A variance for a deck in the setbacks will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. Granting the variance will cause no harm; it will not increase traffic congestion, decrease traffic safety, decrease the tax base, create the potential for sewage/septic overloading, or increase the risk of damage to water quality. A variance for a deck will not unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. They are decreasing the violation by all of the parts of the decking they are removing. They bought the house with substantial decking in violation of the setback requirements and because the house is already located in the setbacks, they would be asking to keep a small portion of the current decking attached to the house to be allowed in the side and front setback areas.

The Zoning Board was polled and they are all in agreement.

2. If the variance were granted the spirit of the ordinance **would** be observed because:

Application: Their deck does not create congestion beyond that envisioned in the zoning ordinance. A variance for their deck does not violate the spirit of the ordinance because it would not result in overcrowding. A variance will not unduly or to a marked degree conflict with the ordinance such that it violates or undermines the legal purposes the zoning ordinance serves or the reasons it was enacted.

The Zoning Board was polled and they are all in agreement.

3. Granting the variance **would** do substantial justice because:

Application: Granting the variance to approve the deck is not outweighed by any gain to the general public. Its proposed development is consistent with the area's present residential use and is similar to adjoining residential uses.

The Zoning Board is polled and they are all in agreement.

4. If the variance were granted the values of the surrounding properties **would not** be diminished:

Application: This deck does not block a view of the water or the mountains or sunset, or sunshine of any adjacent lots so it does not decrease property values. The deck use is consistent with abutting residential uses so it will not decrease property values.

The Zoning Board is polled and they are all in agreement.

5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance **would** result in an unnecessary hardship because:

Application: The variance sought for a deck in the setback area is a restriction on a dimensional limitation on a permitted residential use. The lot is unique in that it is directly adjacent to the Loon Mountain Recreation Ski Area which is comprised of wide-open spaces in the area adjacent to their home. The buildings and trails for the ski area are far removed from their house. Owing to special conditions of the property that distinguish it from other properties in the area, there is no fair and substantial relationship that exists between the general public purposes of the ordinance provision for setback requirements and the specific application of that provision to their property.

And the proposed use is a reasonable one because:

Application: The decking is a reasonable use in a residential neighborhood. Granting the variance will not negatively affect neighboring properties or the Town's zoning goals.

The Zoning Board is polled and they are all in agreement.

Motion to adopt the Findings of Fact for the Application for the Variance by Vice Chair D'Amante

Second by Member Daly

All in favor.

Motion to grant the Application for the Variance by Member Daly

Second Member Sullivan

All in favor

V. OTHER BUSINESS: None

VI. PUBLIC PARTICIPATION AND OTHER BUSINESS: None

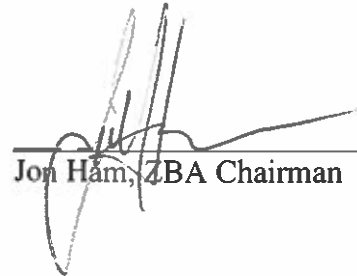
VII. ADJOURNMENT

Motion to adjourn by Member Daly
Second by Member Sullivan
All in favor

Respectfully submitted,

Judy Sherriff
Recording Secretary

Date Approved: December 15, 2021



Jon Ham, ZBA Chairman



P L A N N I N G & Z O N I N G
D E P A R T M E N T

NOTICE OF DECISION - GRANTED

**ZONING BOARD OF ADJUSTMENT
TOWN OF LINCOLN, N.H.**

**Case No: ZBA WDR 2021-01 M124 L026 Mansharamani (d/b/a Kelan TorLoonKai, LLC)
– House and Decking in Setback Areas**

You are hereby notified that the appeal of Vikram & Kristen Mansharamani d/b/a Kelan TorLoonKai, LLC) for a **VARIANCE** and an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS**

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)

for their property at 33 Governor's Lane in Westwood Acres Resort (Tax Map 124, Lot 026) in the Rural Residential (RR) District

for the ZBA to allow the existing home located partially in the fifteen-foot (15') side setback area to remain and to allow two (2) small portions of the existing large decks located in the fifteen-foot (15') front and side setback areas to remain

has been **GRANTED** without conditions by the ZBA unanimous vote of five (5) members at a public hearing on November 17, 2021.

Appellant & Property Owners:

Vikram & Kristen Mansharamani
33 Governor's Lane
PO Box 842
Lincoln, NH 03251-0842

Surveyor:

Andrew J. Nadeau, LS, PLS
President, Principal Surveyor
Horizons Engineering, Inc.
34 School St., Littleton, NH 03561

Property:

33 Governor's Lane in Westwood Acres Resort (Map 124, Lot 026)
General Use (GU) District
Part of "Westwood Acres Homeowners Association"

Proposal:

Appellants/new owners proposed to remove the existing decks located on lands of the abutter and substantial portions of the existing decks within the fifteen-foot (15') side setback area to the east, including

the portion of the deck that encroached on the land owned by Loon Mountain Recreation Corporation. They proposed to keep a portion of one deck already in the fifteen-foot (15') side setback area and a portion of another deck slightly in the fifteen foot (15') front setback areas.

The subject parcel is located in the Rural Residential (RR) District where the setback requirement is fifteen feet (15') from the front, side and rear property boundary lines.

The first known violation by previous owners occurred in 1987 when the house was permitted (although portions of the house may have been constructed earlier than that date) and then constructed into the side setback one (1) year after the LUPO was adopted in 1986.

Several additional violations by successive owners occurred in successive years when unpermitted additions were made increasing the size of both the home and decks.

One incomplete application for a building permit for two (2) decks was submitted in 2003, but the application was never completed and no permit was issued.

Portions of the decks were built in the fifteen foot (15') side and front setback areas without variances and also were built partially on abutting land owned by Loon Mountain Recreation Corporation without permission from the abutting property owner.

The initial violation has existed for 34 years and each successive violation with no enforcement action, including written notice, being commenced by the Town.

The nonconformity was discovered by the Town Planner in 2021 when Appellants submitted an application for a Land Use Permit.

FINDINGS OF FACT:

1. Removing the ramp that was built beyond the property line, prior to their acquisition of the property, is an improvement to the site.
2. It has been confirmed that they are removing almost all of the deck that was built within the setback over the prior years and prior to their acquisition of the property.
3. The changes make the real estate and its improvements more conforming to the conditions of the applicable zoning ordinance.
4. The proposed additions are generally in compliance with the setback requirements of the zoning ordinance except as discussed during the meeting and the removal of the encroachments as it relates to abutting land is an improvement as well.
5. Unique aspects of the home include abutting the non-residential area to the east that is recreational open land owned by Loon Mountain Recreation Corporation operated as a downhill ski resort.

Granting an Equitable Waiver of Dimensional Requirements

1. **The request involves a dimensional requirement, not a use restriction.**
2. **The violation existed for ten (10) years or more with no enforcement action, including written notice being commenced by the Town.**

The 1st violation by previous owners occurred in 1987 when the house was constructed into the side setback one (1) year after the LUPO was adopted in 1986. Several additional violations by successive owners occurred in successive years when unpermitted additions were made increasing

both the size of the home & decks. One incomplete application for a building permit for two (2) decks was submitted in 2003, but the application was never completed and no permit was issued. Portions of the decks were built in the side and front setback areas without variances and also were built partially on the abutting land of Loon Mountain Recreation Corporation without permission from the abutting property owner.

3. The non-conformity was discovered after the structure was substantially completed or after a vacant lot violation has been transferred to a bona fide purchaser.

The initial violation has existed for 34 years and each successive violation with no enforcement action, including written notice, being commenced by the Town. The nonconformity was discovered by the Town Planner when applicant submitted an application for a Land Use Permit. No due diligence was done by the new owners.

4. The non-conformity does not constitute a nuisance or diminish the value or interfere with the future uses of any other property in the area.

These violations have existed for many years before they bought the property and no one complained or was unable to sell their homes or were unable to sell their properties because of the violations of the prior owners. They were not even aware of the violations.

5. The cost of correction far outweighs any public benefit to be gained.

Appellants were proposing to make their home more compliant than in the past. They cannot move the house though.

6. The violation was not an outcome of ignorance of the law or bad faith or a good faith error in measurement or calculation on behalf of the new owners.

Application: The appellants are new owners. They learned of the violations when they submitted their application to the Town for a Land Use Authorization Permit for an addition (not within the setback areas). After they learned of the violations, they modified their proposed plans. They are removing much of the decking and the walkways that were in the setback areas. They would like to leave a portion of the deck that is in the side and front setback areas (the rear deck and some front decking) due to structural issues. They will remove both the side deck and walkways in the setback areas; they will leave the rear deck partially in the side setback and the front deck in the front setback. The continued violation was a good faith error on behalf of the appellants.

Granting a Variance

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

A variance for a deck in the setbacks will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. Granting the variance will cause no harm; it will not increase traffic congestion, decrease traffic safety, decrease the tax base, create the potential for sewage/septic overloading, or increase the risk of damage to water quality. A variance for a deck will not unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. They are decreasing the violation by all of the parts of the decking they are removing. They bought the house with substantial decking in violation of the setback requirements and because the house is already located in the setbacks, they would be asking to keep a small portion of the current decking attached to the house to be allowed in the side and front setback areas.

2. If the variance were granted the spirit of the ordinance would be observed because:

Their deck does not create congestion beyond that envisioned in the zoning ordinance. A variance for their deck does not violate the spirit of the ordinance because it would not result in overcrowding. A variance will not unduly or to a marked degree conflict with the ordinance such that it violates or undermines the legal purposes the zoning ordinance serves or the reasons it was enacted.

3. Granting the variance would do substantial justice because:

Granting the variance to approve the deck is not outweighed by any gain to the general public. Its proposed development is consistent with the area's present residential use and is similar to adjoining residential uses.

4. If the variance were granted the values of the surrounding properties would not be diminished:

This deck does not block a view of the water or the mountains or sunset, or sunshine of any adjacent lots so it does not decrease property values. The deck use is consistent with abutting residential uses so it will not decrease property values.

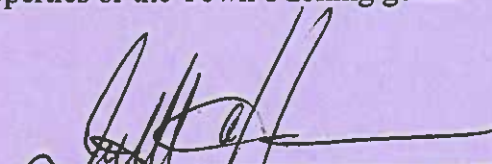
5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in an unnecessary hardship because:

The variance sought for a deck in the setback area is a restriction on a dimensional limitation on a permitted residential use. The lot is unique in that it is directly adjacent to the Loon Mountain Recreation Ski Area which is comprised of wide-open spaces in the area adjacent to their home. The buildings and trails for the ski area are far removed from their house. Owing to special conditions of the property that distinguish it from other properties in the area, there is no fair and substantial relationship that exists between the general public purposes of the ordinance provision for setback requirements and the specific application of that provision to their property.

And the proposed use is a reasonable one because:

The decking is a reasonable use in a residential neighborhood. Granting the variance will not negatively affect neighboring properties or the Town's zoning goals.

Dec 20 / 2021
Date


Jonathan (Jon) Ham, Chair, Zoning Board of Adjustment

Note: The selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677. This notice has been placed on file and made available for public inspection in the records of the ZBA on the above date and will be published in the newspaper. Copies of this notice have been distributed to the appellant, Planning Board, Board of Selectmen, Town Clerk, and Property Tax Assessor.