

**APPROVED**

**ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
Wednesday, May 4, 2022 – 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 may attend via ZOOM if they wish.

**Join Meeting via Zoom:**

<https://us02web.zoom.us/j/84095019525?pwd=VkkwT3ZCZk5tanlWVjE4dTJWeG9XZz09>

**Meeting ID: 840 9501 9525**

**Passcode: 019945**

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

**I. CALL TO ORDER at 6:09PM by Acting Chair Jon Ham**

**Members Present:** Acting Chair Jon Ham (Alternate), Chair (but not physically present) Ray D'Amante (via Zoom), Member Vice Chair Mark Ehrman (via Zoom), Member Jack Daly, Member Delia Sullivan, Alternate Susan Chenard. (Jon Ham was Acting Chair because Chair D'Amante was attending via ZOOM and not physically present in the meeting room.)

**Excused:** Member Myles Moran

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

**Guests:**

- **Beato Nacnac** (nonresident), (**APPELLANT/AGENT/ARCHITECT** for Property Owners Richard Armand Di Iorio and Susan R. DiIorio of 79 Concerto Court, North Easton, MA 02356, who own 24 Yellow Birch (Map 121, Lot 034) AIA, Architect, Locati Architects, 1007 East Main Street, Suite 202, Bozeman, Montana 59715.
- **Brian G. Norton**, (nonresident) (**ABUTTER**), of 20 Gray Road, Campton, NH 03223 (**ABUTTER**), President and General Manager of Loon Mountain Resort, 60 Loon Mountain Road, Lincoln, NH, 03251; Loon Mountain Resort is owned by Boyne Resorts, 3951 Charlevoix Avenue, Petoskey, Michigan, 49770.
- **Scott Schermerhorn** (nonresident) (**ABUTTER**), co-owns with Susan Evans Norris, as Co-Trustees of Susan Evans Norris Revocable Trust, 144 Oak Hill Road, Concord, NH 03301 Map 121, Lot 033 (28 Yellow Birch Circle).
- **Kyle Tague** (nonresident) (**APPELLANT/ARCHITECT** for Property Owners Richard Armand Di Iorio and Susan R. DiIorio of 79 Concerto Court, North Easton, MA 02356, who own 24 Yellow Birch (Map 121, Lot 034) AIA, Architect & Partner at Locati Architects, 1007 East Main Street, Suite 202, Bozeman, Montana 59715.

## **II. CONSIDERATION of meeting minutes from:**

- March 29, 2022 (Present: Acting Chair Jon Ham, Selectman's Representative Jack Daly (via Zoom), Vice Chair Ray D'Amante, Member Mark Ehrman (via Zoom), Member Delia Sullivan, Alternate Susan Chenard)

**Motion to approve minutes as distributed by Selectmen's Representative Daly  
Second Vice Chairman Ehrman**

**All in favor**

- May 20, 2020 (Present: Chair Paul Beaudin, Vice Chair Ray D'Amante (via ZOOM), Member Jack Daly, Member Delia Sullivan, Member Myles Moran and Alternate Jon Ham) (Minutes were never created for this meeting. During Covid-19 Lockdown. Recorder quit.)

**Motion to approve minutes as amended by Selectmen's Representative Daly  
Second Susan Chenard**

**All in favor**

**Abstained Mark Ehrman**

## **III. CONTINUING AND OTHER BUSINESS-NONE**

## **IV. NEW BUSINESS**

1. **6:00 PM. Request for a Variance for ski-in ski-out bridge within the fifteen-foot (15') front setback area.**

**[Var 2022-02 M121 L024 Di Iorio + Beato Nacnac – Variance for ski-in ski-out bridge in fifteen-foot (15') rear setback area]**

Request for a **VARIANCE** concerning Article VI District and District Regulations, Section B District Regulations, Paragraph 2 Land Use Schedule, Paragraph 4 (Dimensional Chart) of the zoning ordinance known as the Land Use Plan Ordinance (LUPO) to erect a ski-in ski-out bridge from the proposed new house for 24 Yellow Birch Circle (Map 121, Lot 034) to the ski trail over the setback line from the fifteen-foot (15') property setback line all of the way to the property boundary line with common land owned by South Peak Resort to hook up with the ski trail that runs behind the subject lot.

### **Appellant/Architect & Agent for Property Owners:**

Beato Nacnac, AIA, Architect  
Locati Architects  
1007 East Main Street, Suite 202  
Boseman, Montana 59715

### **Property Owners:**

Richard Armand Di Iorio & Susan R. Di Iorio  
79 Concerto Court  
North Easton, MA 02356

**Engineer:**

Marc L. Burnell, PE  
Horizons Engineering, Inc.  
34 School Street  
Littleton, NH 03561

**Property:**

24 Yellow Birch Circle (Map 121, Lot 034), General Use (GU) District.  
Part of South Peak Resort Community Association.

**Project:**

The subject lot is within Phase I (68 Single Family Home Lots) of the development known as "South Peak Resort" and is located within the General Use (GU) District where front, side and rear setbacks are fifteen feet (15') from the property boundary line. No structures are permitted within the setback area. The proposed building plan to build a single-family residence includes a "ski-in and ski out" bridge from the house to the ski trail over the setback from the fifteen-foot property setback line all of the way to the property boundary line with Common Land owned by South Peak Resort to hook up with the ski trail that runs behind the subject lot across the street (Crooked Mountain Road) from the Pemigewasset Base Camp all within the rear setback area. Appellants need a variance to put an 8.5-foot-wide covered ski bridge in the fifteen-foot (15') setback area.

**Discussion:**

Chair D'Amante reviews the application for the variance and notes that proper information is missing from the application. The conditions 1-5 which meet the criteria for a variance are not present. (See attached Conditions Explained, pages 4 and 5 from application.) The application notes that there are multiple bridges in Lincoln but that does not necessarily justify a variance. He would like the applicant to address the issues that are currently missing from the application. He asks the ZBA how they would like to proceed.

Vice Chair Ehrman references RSA 674:33 which is the ruling NH State statute, and the applicants haven't explained the hardship of not having a bridge in their application. The applicants need to demonstrate in what way this particular property is harmed by the setback requirement. He adds that directly adjacent to this property there is an easement and a [ski trail] passageway approximately twenty (20) feet from the property. A ramp, pathway or walkway could be built allowing for direct access to the ski trail without the need for a bridge.

Vice Chair Ehrman adds that there are no full elevations of the buildings on the plan and it's not the ZBA's job to judge whether the plans for this building comply with the South Peak Community Association's homeowner's agreement that everybody signs when they purchase a South Peak Resort lot. Due to the homeowner's agreement, he thinks that

almost anyone would have an actionable cause and a right to prevail. He feels that doing more work on the application would be a good idea and as a favor to the applicants the ZBA could consider not examining this application at this meeting today. In his opinion, if the ZBA examines the application today they would not be able to approve it in the current form.

Vice Chair Ehrman says the applicants can take a look at the NH RSA 674:33 and the Conditions Explained on pages 4 and 5 of the Application for a Variance form and put together their best shot for falling within those guidelines. He feels this approach is a friendly way of working with the applicant instead of just saying the application for a variance is “denied”.

Chair D’Amante adds that as a procedural matter, this application can be tabled and when they supplement the missing elements the ZBA can then make an informed decision.

Appellant/Architect, Kyle Tage joins the discussion and mentions that he just received the information and has not had a chance to review it. On behalf of his client he would like to be able to make the best case for the variance and there are some physical site constraints that warrant the need for the additional length of the proposed bridge to gain more elevation. He understands that there is a better way to articulate that and give the ZBA a way to fairly address this situation. Mr. Tage adds that they have received approval from the South Peak Resort Architectural Review Board (ARB) and the bridge has been approved as much as the ARB can. The request for a variance is now “a township issue” and not a South Peak Resort issue.

Appellant/Architect, Kyle Tage adds the design elements (height, size, amount of tree removal, grading) of the house have also been approved by South Peak Resort Homeowners Association and is ready for construction according to the South Peak Resort ARB.

The ZBA discusses, other similar ski bridges, one located on the top of Hemlock Drive and thinks those existing ski bridges pre-date the adoption of the Town’s zoning ordinance (i.e., the Land Use Plan Ordinance) or setback requirements and, therefore, those bridges aren’t relevant to this discussion.

Member Daly asks Mr. Brian Norton, President and General Manager of Loon Mountain Resort (Loon) if he is aware of any bridges that are in the setbacks and would this bridge, if approved, interfere with the Loon ‘s snow making and maintenance of the trail.

Mr. Norton responds that Loon has an operating agreement and easements to operate and maintain the trails within South Peak Resort and is only concerned with any impeding of the easements that prevent Loon from performing the required maintenance per the operating agreement. Mr. Norton cautions anyone that is trying to build too close to a ski trail, that is actively maintained (snow making, driving snow cats, guests of S. Peak, or skiers who ski onto area), could experience some problems such as blowing snow, etc.

Planner Bont explains that the proposed bridge is right up to if not on the boundary line with Loon Mountain Recreation Corporation land and will send Mr. Norton the site plans for his review.

Chair D'Amante asks if the South Peak Resort Community Association (homeowner's association) requires some kind of general liability insurance.

Appellant/Architect, Kyle Tague responds that he is not aware of an insurance requirement. It was not mentioned in the South Peak Resort ARB approval that they were given.

Appellant/Architect, Kyle Tague adds that the bridge is approximately four (4) feet from the trail and a person would have to be off the trail to access it. There will not be any stairs spanning the four (4) feet to the trail, up to the property line, and the homeowners will need to traverse that distance. The distance to traverse will be approximately fifteen (15) feet if they have to stop at the setback.

Vice Chair Ehrman mentions, in his opinion, that there is a [ski trail access] right-of-way (ROW) used by the neighborhood and a bridge is not solving a problem, rather it would be creating a private entrance onto the trail and does not meet the requirements for a variance from the ZBA. He adds that the hardship element RSA 674:33 can not be met no matter what they do. There may be a way to get to some other element of the five-step determination but the ZBA would not be authorized to grant the variance.

Abutter Mr. Scott Schermerhorn, explains that he has a similar hill behind his home and they just walk up it to gain access to the trail. He agrees the home will be beautiful and will add to the neighborhood but he feels a bridge would be out of character for the neighborhood. The existing trail leading to the ski trail is a beautiful, wooded, aesthetically pleasing trail. Most homeowners simply walk and don't have stairs or a bridge.

Vice Chair Ehrman responds that it could be dangerous because it's a potential obstacle or contingent liability.

Abutter Mr. Schermerhorn notes that on a weekend you will often have ski school with young kids coming down that trail to get to the lift and a bridge next to the trail could pose a problem. Also, with trail grooming and blowing of snow the bridge may become snow packed and inaccessible.

Appellant/Architect, Kyle Tague mentions that the approval from the South Peak Resort ARB was contingent upon the township approval of the variance.

The ZBA members discuss how they want to proceed. Member Sullivan poses that the ZBA ask the applicant how they would like to proceed. Would they like to have the ZBA decide based on the application that has been presented or would they like to table it and come back with an amended application. Mr. Tague responds that he would like to table it and come back with a more articulated response for the ZBA to evaluate.

Planner Bont would like to have a date certain for the next meeting to avoid having to re-send abutter notices and asks Mr. Tague how much time he will need to prepare. She would schedule a meeting date a week to two weeks from the date she receives the information from Mr. Tague. Planner Bont suggests the next meeting be on June 1, 2022 and will post it on the agenda, which is on the Town of Lincoln's website, the Friday prior to the meeting.

A suggestion was given to Mr. Schermerhorn to contact the South Peak Resort homeowner's association and let them notice the abutters of the June 1, 2022 meeting as Planner Bont will not be re-sending the notices to abutters. She will send Mr. Schermerhorn the agenda via email. Planner Bont asks that she receive the revised application from Mr. Tague no later than May 24, 2022.

Chair D'Amante reminds Mr. Tague to look at the Conditions Explained and remember that it is what the State of New Hampshire presents as an explanation for the ZBA.

**Motion to continue this hearing without prejudice until June 1, 2022 at 6:00PM by  
Member Daly  
Second by Vice Chair Ehrman  
All in favor**

Member Sullivan would like to know if the proposed bridge is in Loon Mountain's Easement.

Mr. Norton reviews the plans and from what he can tell it is probably fine from Loon's point of view. Member Daly will deliver the plans to Mr. Norton for his review.

**V. OTHER BUSINESS:** (Staff and Zoning Board Member/Alternates). *None*

**VI. PUBLIC PARTICIPATION AND OTHER BUSINESS:** *None.*

**VII. ADJOURNMENT**

**Motion to continue this meeting to June 2, 2022 at 6:00 by Acting Chair Jon Ham  
Second by Member Sullivan  
All in favor**

Respectfully submitted,

*Judy Sherriff*  
Recording Secretary

Date Approved: \_\_\_\_\_

*June 1, 2022*

\_\_\_\_\_  
Acting Chairman Ham