



TOWN OF LINCOLN NEW HAMPSHIRE

PLANNING BOARD
ZONING BOARD OF ADJUSTMENT

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: Var 2021-03 M121 L022 Carbonneau – Retaining Wall in Setback Area

You are hereby notified that the appeal of Daniel and Michelle Carbonneau for a **VARIANCE** to build a retaining wall greater than four feet (4') in height into the fifteen-foot (15') rear setback area 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) has been **GRANTED** with conditions by the ZBA unanimous vote of five (5) members at a public hearing on April 7, 2021.

Appellant & Property Owners:

Daniel & Michelle Carbonneau
60 Boulder Road
Wellesley, MA 02481

Engineer:

Andrew J. Nadeau, LLS
Horizons Engineering, Inc.
34 School Street
Littleton, NH 03561

Surveyor:

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

Property:

20 Crooked Mountain Road in South Peak Resort (Map 121, Lot 022)
General Use (GU) District
Part of "South Peak Resort Community Association" Phase I (68 Single Family Home Lots)

CONDITION:

1. Appellants shall provide an Erosion and Sediment Control Plan to the satisfaction of the Town's Engineer Raymond Korber of KVPartners, LLC.

4/15/2021
Date


Paul J. Beaudin, II, 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.

Findings of Fact

1. The property owners and Appellants are Daniel & Michelle Carbonneau, 60 Boulder Road, Wellesley, MA 02481.
2. The Carbonneaus own 20 Crooked Mountain Road (Tax Map 121, Lot 022) – the “subject lot”.
3. The subject lot in the General Use (GU) District which has fifteen-foot setback requirements from the front, side and rear property boundary lines.
4. The house on the subject lot was built in 2008.
5. In the course of building the home, a series of boulder retaining walls were erected for the purpose of retaining the soil below the soil behind the house and to support the house.
6. An existing retaining wall is failing.
7. When inspecting the property, the property showed signs of foundation settlement including cracks in the walls, shifting of window casings, separation of molding, shifting of deck piers (two story deck) along with movement in the deck framing all located in the northern most section of the house. (A report was prepared and was submitted as part of the application for a variance.)
8. Property owners hired a structural engineer and a geotechnical engineer to inspect the property and their “consensus is that there is a foundation settlement issues, very likely caused by movement of the large stone retaining wall and/or settlement of the backfill materials placed during construction of the property.”
9. The engineers had proposed installing helical piles to underpin the foundation and the deck piers or to stabilize the existing retaining wall.
10. Owners have been working with a contractor to pursue the helical piles since that solution would be less costly and provide the greatest support.
11. Owners contacted three (3) different drilling companies and the owners were advised by the drilling companies that they are unable to get the proper equipment to the area for either soil samples or the helical pile installations due to the limited space in the rear of the property due to the slope of the land. In addition to not having enough space to get the equipment to the rear foundation, the drilling companies also expressed concerns with putting the heavy equipment on soil that is already unstable.
12. The owners are left with the more costly solution of installing a new retaining wall to stabilize the existing loose boulder wall that currently exists on the property.
13. Owners propose to build the proposed retaining wall with construction blocks to provide the necessary downward support to hold back the soil.
14. The surveyor determined that the existing wall sits on the setback line and therefore, the owners need a variance for the proposed wall.
15. The proposed project is at the rear property line. The project would involve accessing the owners’ property through his neighbor’s vacant lot (Tax Map 121, Lot 024) at 165 South Peak Road (also known as “Lot .51” in South Peak Resort). His neighbors are Benjamin P. Rogers and Kristin L. Rogers, 898 East 4th Street, Boston, MA 02127.
16. Benjamin P. Rogers and Kristin L. Rogers, intend to build their own home this spring (2021) on their vacant lot at 165 South Peak Road (Tax Map 121, Lot 024) (also known as “Lot .51” in South Peak Resort).

17. Benjamin P. Rogers has provided his support for the Carbonneaus' retaining wall project however, Rogers is in the process of completing his own plans to build a house on his own property so the Carbonneaus' access to build the new retaining wall is subject to the Rogers' timeline for building his own house.
18. The South Peak Community Association by and through its South Peak Resort Architectural Review Board approved the retaining wall project by letter dated February 8, 2021 and submitted with the owners' application for a variance.
19. The ZBA found:
 - a. Granting the variance would not be contrary to the public interest because:

Granting the variance will not alter the essential character of the neighborhood nor will it create any harm to the public. In fact, granting the variance will allow for improvements on the subject property which will address a safety concern and be in the best interest of the general public and the neighboring properties.
 - b. If the variance were granted, the spirit of the ordinance would be observed because:

The granting of the variance would not violate the spirit of the ordinance as there would still be sufficient space between the home on the subject property and the neighboring lots. The variance is not being sought to extend the footprint of the home on said property and would not result in overcrowding within the neighborhood.
 - c. Granting the variance would do substantial justice because:

The grant of the variance will allow the property owner to address a safety concern on the property that could impact not just the subject property but the adjacent property as well. Allowing the variance and the 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.

CONDITION: The applicants provide an Erosion and Sediment Control Plan to the satisfaction of the Town Engineer.
 - d. If the variance were granted, the value of the surrounding property would not be diminished:

The variance is being requested to allow for a use which is consistent with the existing property and which would have no impact on the surrounding properties. The variance does not impact the value of the surrounding properties or on the use and enjoyment of the surrounding properties. If the variance is requested, there is still sufficient space between the existing building on the subject property and the proposed building on the adjoining property such that there is no overcrowding.
20. Unnecessary hardship
 - a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The variance is in the rear of the subject property and rear of the adjoining property. The variance would have no impact on the general public but could result in unnecessary hardship if the subject property continues to experience damage associated with movement of the underlying land.

ii. The proposed use is a reasonable one because:

It is being sought to reinforce an existing structure and to provide stability and safety to said property that will protect said property along with the adjoining property.

