

**Deering Zoning Board of Adjustment
762 Deering Center Road
Deering, New Hampshire 03244**

Unapproved Minutes of February 22, 2024

Members Present: David LeFevre, Chair, Member Phil Bryce, Member Ralph Lachance, Member Allen Belouin

Town Officials Present: Selectmen's Representative Jill Smith.

Others Present: On behalf of the applicants, Attorney Dan Muller, Tyler Hennas of Meridian Land Services, Inc.

The meeting convened at 7:05 p.m. No members of the public were in attendance. The applicants in Case 2024.01 were not in attendance. The Applicants' legal representative, engineering representative, and construction contractor were in attendance.

Prior to presenting their case, Chair LeFevre advised the applicants' agents that there were only 4 Board members present. The Applicants' agents elected to proceed with less than a full Board. Chair LeFevre also informed all persons of a potential conflict of interest with Attorney Muller, which was waived.

Counsel for the applicants in Case 2024-01 presented the case by reviewing the applicants' proposal and plan, explaining the re-development proposal for the property. Counsel's presentation largely mirrored the written submission, and answered the numerous questions of the Board.

It was noted by Selectman Smith that title ownership to the Property has changed since the application was filed; title is now in the name of White Gate Property, LLC. The Board assumed that the pending application is now duly authorized by the LLC.

During its deliberations, it was the conclusion of the Board that the original residence was a pre-existing non-conforming structure. Redevelopment of the property contemplates reconstruction "in kind" of the non-conforming structure with no expansion of the existing footprint. Redevelopment of the property has been approved by NH DES and the Deering Planning Board.

Neither the deck nor the open porch exceed 12 feet in width (toward the reference line). The drip edge operates as an overall drainage betterment. The steppingstones have been deemed a pervious surface by NH DES, and are ostensibly permitted as a matter of right. See RSA § 483-B:9 ("foot path" allowed within the protected shoreland).

The Board reviewed Section 4.4.13 (a) of the Deering Zoning Ordinance which provides that, "... nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a

functionally equivalent use“ and that “. . . the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line” *Id.*

The Board determined that the deck and open porch were permitted as a matter of right. While conceivably Section 4.4.13 (a) was inapplicable because the existing nonconforming structure was being replaced, and therefore the new structure was not constructed prior to July 1, 1994, the Board believed that such an interpretation would lead to an unfair result. The Board determined that the drip edge was a “modern technology” and a “functionally equivalent use,” and therefore permitted as a matter of right. The Board determined that the steppingstones were structures, but essentially *de minimus*, and as aforesaid, were considered a pervious surface and likewise permitted as a matter of right. The Board noted that the deck and open porch may not be converted or enclosed to be used as additional living space.

The Board determined that no variance or special exception is required. The variance and special exception were denied on the ground that the relief was unnecessary. It was the conclusion of the Board that the open porch, deck, drip edge, and steppingstones, were allowed within the scope of permissible improvements contemplated under Section 4.4.13 (a) of the Deering Zoning Ordinance as a repair, renovation, replacement, or expansion of a non-conforming structure.

The second component of the request, for a variance from Section 4.1.1 of the Deering Zoning Ordinance to authorize construction of accessory residential structures on the property located at 745 White Gate Road, Tax Map 235, Lot 20, was **withdrawn without prejudice**.

It was the general consensus of the Board that Section 4.1.1 of the Deering Zoning Ordinance was not applicable, and while a variance may be required to authorize the accessory residential structures, the Board was reluctant to act on the application without first giving the applicant the opportunity to apply for a building permit, and to then appeal to the Board if need be, with a renewed application which better addressed the unique development proposal.

The Board approved the meeting minutes from May 9, 2023.

Adjournment: There being no further business, Chairman LeFevre adjourned the meeting at approximately 9:15 p.m.

Respectfully submitted,

David LeFevre, Chairman