

**Town of Milford
Zoning Board of Adjustment
August 18, 2016
Case #2016-15
Nathan and Brooke Langlais
Special Exception
(Continued)**

Present: Kevin Johnson Chairman
Michael Thornton
Joan Dargie
Jason Plourde
Rob Costantino

Excused: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

Nathan and Brooke Langlais for the property located at 9 Willow St, Milford NH, Map 29, Lot 164, in the Residence A District, are seeking a Special Exception per the Milford Zoning Ordinance Article V, Section 5.02.5.A to allow a deck to be constructed four (4) feet +/- from the side setback line where fifteen (15) feet is required per Section 5.02.5C.

MINUTES APPROVED ON 11/3/16

K. Johnson, Chair, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He informed all of the procedures of the Board. This case was continued from the August 4, 2016 meeting. K. Johnson read the notice of hearing into the record.

The case was currently in the deliberative discussion. On this case, Jason Plourde was not present and had not heard the case, and Len Harten was not present at this meeting. So the four members – Kevin Johnson, Mike Thornton, Joan Dargie, Rob Costantino– would be discussing the criteria and voting.

K. Johnson said there were seven criteria. Five for Sec. 10.02A and two for Sec. 2.03.1.C.

R. Costantino said for the first, the proposed use is similar to those permitted in the district, this was to add a deck to a residence and a deck was a permitted use and similar to what was permitted. Yes. Re #2, appropriate location, the deck was in back of the house, an appropriate location. #3, the use will not adversely affect the adjacent area – it was close to the setback and into it; it was raised deck that intruded into setback and reduced privacy of 7 Willow St. neighbor. If you were on the ground looking up to the second floor, not that much of a privacy issue as if you were level with the window of the next house. There was information from a realtor that the proximity to 7 Willow St reduced the value of that property. He realized that was an opinion, but based on the factors his answer is no, because he thought it did adversely affect the adjacent area, particularly 7 Willow St. #4, yes, there was no nuisance or serious hazard to vehicles or pedestrians, since there would not be any out back. It is a private area. #5, adequate appropriate facilities. Yes. The town inspector has looked at it and provided guidance on how the deck should be made. He didn't have the other two criteria.

J. Dargie agreed with Rob. Proposed use was similar to those permitted in the district. Proposed use was a common one. Specific site as appropriate location – specific site being home having deck on the back. It was an appropriate location for proposed use. Went along with Rob on the criteria that the use as developed not adversely affect the adjacent area. Unfortunately, the deck being as large as it is could potentially have affect on the area. Given the information from the neighbor, the deck probably needed to be smaller in size. There will be no nuisance or serious hazard to vehicles or pedestrians. Adequate facilities will be provided; as stated, the building inspector will inspect it. She asked Chair to point out the other two criteria. K. Johnson referred her to Art. II, Sec. 2.03.1.C, Alteration, Expansion or Change of Existing Nonconforming Use or Structure, which he read.

J. Dargie said the neighborhood included the neighbors next door, so it could. Expansion of that deck on the house as large as it was. If it was smaller it would be fine. Thought it would be a substantial effect.

K. Johnson said re question that it will not change the nature of the original use or structure?

J. Dargie said yes, it did.

M. Thornton said he was ready to do the first five criteria. Re proposed use being similar, yes. Specific site not an appropriate location because of the location over the permitted build line within the setback. Re adverse affect on the adjacent area, in this case that was hard for him to answer. How do they mean it? If they say, does it affect the next door neighbor, the answer is yes, to some extent. If they say is it just a safety hazard, answer was probably no. What do they want?

K. Johnson said he could use his judgment as a member of the Zoning Bd. Neither the court nor the legislature had provided specific criteria by which to evaluate the term “effect.” Did Mike feel there was any form of negative effect to any of the adjacent property?

M. Thornton said yes. That would be a “no” to criteria C. He believed adjacent property owner had demonstrated there was a loss of privacy and loss of equity because of the loss of privacy. For D, there would be no nuisance to vehicles and pedestrians. So answer is yes. Didn’t see a problem.

K. Johnson gave his responses while Mike reviewed Sec. II. He prepared his statement in slightly different format. Rather than going strictly by criteria, he went over information presented in the hearing. When he got to # 4, he realized all other issues were moot because of findings in #4. He read the first four he wrote down. Re plan, the existing conditions plan prepared by Todd Land Use Consultants and presented by the applicants, the abutter provided sufficient evidence to show that on its face the plan was so deficient in accuracy as to render it meaningless. Neither the footprint of applicant’s nor the abutter’s dwelling match the evidence shown on the Town GIS database or photos provided by abutter. Invalid. Abutter’s objections to notes provided by Office of Community Development were without merit. They were opinions and treated as such by the Bd. In the past they have agreed with opinions provided and disagreed. They were treated as testimony, the same as information from the applicant, abutters and member of the public. The Bd. is finder of fact. This was information for their use. Third, the abutter’s contention that the addition of the deck would change the use of the property pursuant to the Milford Zoning Ordinance was without merit. Decks and patios are such common that no reasonable person could it would change the use to some other non-defined purpose. Abutter repeatedly stated that he had no objection to the Langlais having a deck on their property. Fourth, abutters provided sufficient evidence, letters from real estate agents, that the deck in its current location would have negative impact on value of abutter’s property. This alone would cause the application to fail to meet the requirements of the special exception. Thus, no further review of abutter’s arguments was required. He then went through the five criteria. #1, it was similar to the other uses. As shown on GIS and other submissions there were other houses in the neighborhood with decks. Specific site an appropriate location? Agreed with Mike and said no. This site was not appropriate because it extended too far into the setback. Use as developed will not adversely affect adjacent area? He accepted information presented that it would have adverse impact. Serious nuisance or hazard criteria was met. Addition would not create nuisance or serious hazard, being away from the street. Re adequate appropriate facilities, relied on building inspector to determine. Proposed alteration, expansion or change will not change nature or use of structure – did not think addition of a deck to a residential home would change original use of the property. And proposed

alteration, addition or change would involve no substantial affect on the neighborhood. He did not find any substantially different effect on the neighborhood by having a deck on the house.

M. Thornton responded to the last two criteria. The proposed alteration, expansion or change shall not change the nature of the original use of the structure and the proposed alteration, expansion or change shall involve no substantially different effect on the neighborhood. If it were within property line, he would agree. If they weren't contingent, he would agree. Believed owner of the deck was, according to information given and his prior building permits, familiar with the building permit process. He knew or should have known that building a deck in this shape in this location would not have been allowed so close to the setback.

K. Johnson asked, for the proposed alteration, expansion or change would not change the nature of the original use of the structure, yes or no?

M. Thornton said no. It would not change it. So, that is a yes.

K. Johnson asked, would it involve no substantially different effect on the neighborhood?

M. Thornton said that is no, because of shape and location of the deck.

K. Johnson as for any further discussion of the criteria.

Vote on Special Exception Criteria

1. Is the Special Exception allowed by the Ordinance?

J. Dargie yes; R. Costantino – yes; M. Thornton – yes; K. Johnson – yes

2. Are all the specified conditions present under which the Special Exception may be granted?

J. Dargie – no; R. Costantino – no; M. Thornton – no; K. Johnson – no

K. Johnson requested a motion to deny the Special Exception requested in Case #2016-15.

J. Dargie so moved.

R. Costantino seconded.

Final vote: A yes vote was to deny the Special Exception

M. Thornton- yes

J. Dargie – yes

R. Costantino – yes

K. Johnson – yes

K. Johnson informed applicant the special exception was unanimously denied and of the 30-day appeal period.