Approved as amended September 11, 2018

Town of Fitzwilliam
Zoning Board of Adjustment
Meeting Minutes
July 10, 2018

Members Present: Steve Filipi, Chairman; Dan Sutton, Alternate seated for Gretchen Wittenborg; Bob Handy; Chad Beede; Cathy Davis; Susan Massin, Alternate; Carmen Yon, Alternate; Dan Baker, Selectmen's Representative; and Laurie Hayward, Land Use Administrative Assistant (LUAA).

Members Absent: Gretchen Wittenborg; Sue Wood, Alternate

Other's Present: Lon Caracappa, applicant; Adam Kossadya, attorney for Caracappa; Paul Grasewicz, abutter; Carl Hagstrom, interested party.

Call to Order: The Chair called the meeting to order at 7:00 PM

Public Hearing Continuation, Caracappa Appeal:

The Chair opened the Public Hearing stating that this is a continuance of the Public Hearing regarding the **Lon Caracappa appeal**, in reference to Article VII, Section §127-19 F, for two pre-constructed composite platforms with stairs connecting them to be allowed on the shore of Laurel Lake at Caracappa's easement at the Paul Grasewicz property located at Tax Map 24, Lot 1 in the Rural District.

The Chair, addressing Caracappa, asked if the as-builts were submitted to NHDES. Caracappa's attorney, Adam Kossadya, passed out the submission of as-built plans that was made to the New Hampshire Department of Environmental Services (NHDES), along with postal receipt showing a mailing date of July 6, 2018. Caracappa and Kossadya noted that there were corrections made on page 2 and page 3. The corrections related to changes in measurement. Kossadya explained that there are 30 days to accept or reject; if the application to NHDES is not rejected, it can be assumed to be approved. Attorney Kossadya suggested that the Board consider conditional approval of the Caracappa appeal based on NHDES approval.

The Chair asked Seated Alternate Member Sutton about counsel opinion regarding whether they needed to take up overhang encroaching on water. Sutton said no, he did not believe that they did need to take up the issue of the overhang.

The Chair asked Attorney Kossadya to give the major points of his argument. Kossadya says Hardship is clear as the easement presented many physical characteristics that made it difficult to safely use. He noted that, in the spirit of ordinance, safety is a key point. In spirit of the ordinance, justice would give his client the access to water and that was the purpose of his acquisition of the easement. Kossadya noted that the structure in question is not contrary to public interest as it does not obstruct other parties access to water and it is consistent with the looks and uses that already exist on the lake.

Lon Caracappa addressed the board. He stated that the history of the structure in question goes back to March 2016. At that time Caracappa met with David Streeter on the site regarding his need to improve access. Caracappa says he told Streeter to make sure he, Streeter, kept in touch with Paul Grasewicz as he worked through the plans. Caracappa stated that a problem arose with original design and he was told by Streeter that he, Streeter, met with Grasewicz and explained the change and that Grasewicz approved. Caracappa admitted that, in the end, the structure was larger and that was the point at which Grasewicz objected.

Paul Grasewicz spoke. He stated that there was a meeting; but, he feels that there was not a wetland permit and there was no building permit. He feels this is true because he, Grasewicz, did not sign off on either permit. Grasewicz stated that he understands that Snell gave Caracappa an easement; but, the structure goes beyond the easement. Grasewicz noted that his regret is that he approved the smaller plan in the first place. The Chair explained that the board must look at this as though there was no structure and as though the applicant is coming to the Board for the first time.

There was a brief exchange between Kossadya and Grasewicz regarding Caracappa's right to build where he did. The Chair requested that interested parties address the Board not each other.

Caracappa addressed the Board. He said that he would not be here if he had another safe way to use his easement access to actually get to the lake. He said that there were some injuries to individuals using this easement access property and that was a big concern and was the chief motivation to find a safer way to manage to use his easement.

The Chair closed the meeting to further input.

The Chair opened the Board discussion, addressing board members about possible conditions if they decide to approve. He suggested that they might consider no further expansion of the structure and making approval conditional upon NHDES approval. The Chair addressed Attorney Kossadya and instructed him to obtain and forward to the town NHDES approval of their as-built plans.

The Chair made a motion that the hearing be closed; Beede seconded the motion and it was unanimously approved to close the meeting.

The Chair stated this appeal is pursuant to Zoning Ordinance 127:42 to be found on page 73. Board members discussed whether approving this appeal would meet the standards outlined under Town Ordinance noting the following:

1. **Not Contrary to Public Interest.** It was noted that one of abutter, Paul Grasewicz', concerns is that the structure over hangs water. It was agreed that, if the applicant receives NHDES approval of structure, that approval addresses this concern. Members of the Board discussed what constitutes "public interest" and concluded that the safety of the public is an important part. They agreed that the structure involved improves public safety. Sutton added that this is also a modest structure and

part of the purpose of zoning ordinances is to reduce overcrowding. There was unanimous agreement that approval of this appeal is not contrary to public interest.

2. **Is in the Spirit of the Ordinance.** The Chair noted that it has been expressed that what is on the site now is better than what was there. Regarding Grasewicz' claim that the permit applications were invalid, the Chair explained that the owner of the easement has a right to sign the permits for the easement. Board members again pointed out the importance of public safety to the spirit of the ordinance and that the new structure is more of an improvement than not, especially in terms of safety. Members unanimously agreed approval would be in the spirit of the ordinance.
3. **Substantial Justice is Done.** The Chair directed Board Members to weigh what the balance is in terms of how the public might be affected as opposed to how that relates to the landowner needs. The Chair noted that Grasewicz has a point in his concerns; still, the way access and safety was improved the situation leads him to think negative impact could be considered minimal. Regarding whether substantial justice is done by approval, the Chair said "yes"; Beede said "yes"; Sutton said "yes"; and expressed that although Grasewicz has concerns, there should be little impact to the general public. Handy said "yes"; and pointed out this is a rough piece of property with clear hardship connected to using it for the purpose of accessing the lake. Davis said she is a "yes", especially in light of enhanced safety. There was unanimous agreement that approval of this appeal would result in substantial justice being done.
4. **Value of surrounding properties not diminished.** The Chair read from a statement from Grasewicz that it was his point of view that his property value was diminished. There was a brief discussion amongst Board Members regarding whether they can or should attempt to make a detailed assessment on property values and tax impacts. It was agreed that did not have a place in this discussion. The Chair stated that it was the easement that reduced the value more than the structure under consideration. The Chair stated that he doesn't think the structure takes anything away. Essentially, there was already access being made to the lake at that spot, and a new walkway and small structure just didn't change that. Sutton pointed out that perhaps the reduced risk of liability due to a better safety option mitigates any loss of value to Grasewicz. Board Members unanimously agreed that there is no significant diminished value.
5. **Hardship.** The Board discussed the very difficult characteristics of the property that clearly make it difficult to be used as intended without the benefit of a variance. Sutton noted that the proposed use is reasonable. Davis noted that all these aspects are interrelated and that the approval of the variance is a reasonable way to remove the unnecessary hardship and enhance the safety to the public not the reverse.

The Chair moved that the appeal be approved with three conditions:

1. **That there be no additional expansion or extension of the structure or use.**
2. **That maintenance and repair of the structure is permitted as needed.**
3. **That approval of the structure is conditional on NHDES approval of the as-built plans submitted on June 6, 2018.**

It was voted to approve the variance with three conditions unanimously.

Grasewicz asked for the number of days to appeal. The Chair stated that there were 30 days allowed for appeal. A count of days showed that appeal would need to be made by August 9, 2018.

Review of Minutes from June 12, 2018.
The Board briefly discussed the minutes from May and tabled them until the next meeting. The Chair asked Laurie Hayward, the newly hired Land Use Administrative Assistant, to review and edit the minutes for typing errors and resubmit them.

Old Business: The LUAA asked about the status of election of officers. The Chair asked the Board regarding their thoughts on voting Gretchen Wittenborg to be Vice Chair. It was pointed out that Gretchen was not there to defend herself. A Vote was taken and it was unanimously agreed that, if Gretchen was willing, she would be Vice Chair. The LUAA asked about the position of Clerk which was indicated in the rules of Procedure. The Chair stated that he believed that there may have been a vote to remove that position from the Rules. He asked the LUAA to research that, stating that he thought that was changed sometime after 2013.

New Business: The Chair explained that Laurie Hayward, the new Land Use Administrative Assistant (LUAA) has a request. The LUAA explained that she would like to use tapes of each meeting, as provided for in the Zoning Board of Adjustment Rules of Procedure. She went on to explain that this would only be used in support of creating Draft Minutes and that once the Board approves the minutes, the tapes would be destroyed. There was discussion about the pros and cons and how it would work. The Chair pointed out that a previous long-term LUAA, Sandy, had used tapes and when she was in the position for a while, dropped using the tapes. It was agreed that the LUAA could start out using tapes and see whether it is helpful.

There being no further business, the Chair moved and Handy seconded, and it was voted unanimously that the meeting be adjourned at 8:30 PM. There were no new applications, so no future meeting date is provided.

Respectfully Submitted,

Laurie Hayward
Land Use Administrative Assistant