Members Present: Peter Grote (Chair), Phil Krill, Brian Williams and Alicia Shambo.

Others present: Dan Harrigan (Owner); Lois Bijolle, General Manager Mittersill Alpine Resort; and Allan Clark, Building Official.

A scheduled ZBA Hearing was called to order by the Chair on Wednesday, August 21 at 5:37 p.m. after notice was given to abutters and the public. Members were asked if anyone had a conflict. No one expressed a conflict of interest in the matter. The rules of procedure for a public hearing were read and a copy was given to Alicia Shambo, a new alternate member.

The Chair read a letter from Counsel advising that the first question the ZBA should consider in any variance application is whether a variance is needed. Is the ZBA of the opinion that under the circumstances the owner still has nonconforming rights, enabling the reconstruction of the earlier grandfathered deck?

A two-page application letter dated July 25, 2019 was read by the Chair. The Owner requested a variance to cure an alleged 50-foot setback violation, as recommended by the Building Official. The revised ordinance states “...*one (1) One-Family Residential Structure shall be permitted on any vacant existing lot, which was subdivided and recorded prior to March 10, 1987, provided the setbacks for all structures are at least 50 feet from any right-of-way centerline ...”* Article III, Section 3.

The owner’s 1960s home and use is covered under a different provision. “Any *land use to the extent existing at the time of passage of this ordinance, but not conforming thereto, shall have the privilege of continuing in such use indefinitely or of re-continuing in such use within two years of any discontinuance.” Article* IV, Section 1.

Brian Williams asked; “What determines if the property is grandfathered? Is there a legal definition? Show me that no alterations have been or will be made.”

Alicia Shambo asked if the deck was part of the original building. The Owner answered that the deck had been part of the original structure and provided photographs, a replacement deck plan, documents and plans for a new septic system.

Phil Krill asked: “Can we assume that you cannot rebuild the deck the way it was because of the septic system?” The Owner responded that the major change would be below the ground. The Owner then stated that he had been advised by an engineer to remove the field-stone retaining wall because he, the engineer, considered it to be unsafe. The Owner indicated that some footings would also be replaced.

The Owner testified that the new replacement deck would be similar in size and shape; would be placed within the existing footprint of the original deck; and that the new deck would conform with the architectural style of the neighborhood. The Owner stated that the new deck would be used in the same way that the original deck had been used.

Lois Bijolle expressed concerns about traffic congestion, the sight-line and encroachment.

The Building Official stated that a portion of Mittersill Road was on property belonging to the Owner. In the Official’s opinion, congestion and the sight- line would be no worse than what had been the case before construction started. The Official then asked that the following statement be included in the minutes:

*“Let me say what my official opinion is: that it’s not grandfathered. So, don’t get me wrong, I’m in favor of it. So, if the Board determines that it is grandfathered, what you have to do is overturn my ruling which is fine, but I can’t issue a building permit until you say, Allan is wrong. And the reason for my opinion that it’s not grandfathered and needs a variance, which I would approve, is that it’s a matter of precedence....”*

*“It (the deck) was taken down and what will be replaced is not exactly the same. The construction is different; it looks different. If he would build exactly what was there, I would rule differently....”*

The Chair read the first paragraph of the NH statute addressing expansions and alterations in a non-conforming use.

*A zoning ordinance adopted under RSA 674:16 shall not apply to existing structures or the existing use of any building. It shall apply to any alteration of a building for the use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.* (RSA 674:19)

Having heard testimony, reviewed evidence, listened to opinions and assimilated the Town’s zoning ordinance and State law, the ZBA considered whether a variance was needed. Three questions remained unanswered. The Chair asked:

1. Does anyone dispute that a replacement deck of the same size and within the footprint of the original deck will be installed?
2. Does anyone dispute that the proposed deck will measure some 10 x 20 feet and that the design would stay true to the chalet-style of the neighborhood?
3. Does anyone have documents, photographs or evidence showing that a deck with a substantially different shape, use or size will be constructed?

No one objected.

The Chair made a motion to vote on whether a variance was needed or not needed. The motion was seconded by Phil Krill. Members voted that a variance was not needed; the vote was unanimous.

The Chair then convened the scheduled Meeting.

The Meeting agenda listed consideration of a possible by-laws change; substituting the word ‘may’ for ‘shall’ in Section 8. The ZBA decided to postpone that discussion so that all members could provide input.

Before adjourning, members of the ZBA expressed their appreciation for the outstanding presentation; the detailed content; and the clear format of the webinar hosted by Steven Buckley, Esq. and Natch Greyes, Esq. Members very much look forward to participating in future webinars and related NHMA events.

After a motion was made and seconded, the Hearing and Meeting were adjourned at 6:52 p.m.

Respectfully submitted,

Peter Grote, Chair