

1 **Deering Zoning Board of Adjustment**
2 **762 Deering Center Road**
3 **Deering, New Hampshire 03244**

4
5 **Unapproved Minutes of February 22, 2024**
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7 Members Present: David LeFevre, Chair, Member Phil Bryce, Member Ralph Lachance,
8 Member Allen Belouin
9

10 Town Officials Present: Selectmen’s Representative Jill Smith.
11

12 Others Present: On behalf of the applicants, Attorney Dan Muller, Tyler Hennas of
13 Meridian Land Services, Inc.
14

15 The meeting convened at 7:05 p.m. No members of the public were in attendance. The
16 applicants in Case 2024.01 were not in attendance. The Applicants’ legal representative,
17 engineering representative, and construction contractor were in attendance.
18

19 Prior to presenting their case, Chair LeFevre advised the applicants’ agents that there were
20 only 4 Board members present. The Applicants’ agents elected to proceed with less than a
21 full Board. Chair LeFevre also informed all persons of a potential conflict of interest with
22 Attorney Muller, which was waived.
23

24 Counsel for the applicants in Case 2024-01 presented the case by reviewing the applicants’
25 proposal and plan, explaining the re-development proposal for the property. Counsel’s
26 presentation largely mirrored the written submission, and answered the numerous
27 questions of the Board.
28

29 It was noted by Selectman Smith that title ownership to the Property has changed since the
30 application was filed; title is now in the name of White Gate Property, LLC. The Board
31 assumed that the pending application is now duly authorized by the LLC.
32

33 During its deliberations, it was the conclusion of the Board that the original residence was
34 a pre-existing non-conforming structure. Redevelopment of the property contemplates
35 reconstruction “in kind” of the non-conforming structure with no expansion of the existing
36 footprint. Redevelopment of the property has been approved by NH DES and the Deering
37 Planning Board.
38

39 Neither the deck nor the open porch exceed 12 feet in width (toward the reference line).
40 The drip edge operates as an overall drainage betterment. The steppingstones have been
41 deemed a pervious surface by NH DES, and are ostensibly permitted as a matter of right.
42 *See* RSA § 483-B:9 (“foot path” allowed within the protected shoreland).
43

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

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

49
50 The Board determined that the deck and open porch were permitted as a matter of right.
51 While conceivably Section 4.4.13 (a) was inapplicable because the existing nonconforming
52 structure was being replaced, and therefore the new structure was not constructed prior to
53 July 1, 1994, the Board believed that such an interpretation would lead to an unfair result.
54 The Board determined that the drip edge was a “modern technology” and a “functionally
55 equivalent use,” and therefore permitted as a matter of right. The Board determined that
56 the steppingstones were structures, but essentially *de minimus*, and as aforesaid, were
57 considered a pervious surface and likewise permitted as a matter of right. The Board noted
58 that the deck and open porch may not be converted or enclosed to be used as additional
59 living space.

60
61 The Board determined that no variance or special exception is required. The variance and
62 special exception were denied on the ground that the relief was unnecessary. It was the
63 conclusion of the Board that the open porch, deck, drip edge, and steppingstones, were
64 allowed within the scope of permissible improvements contemplated under Section 4.4.13
65 (a) of the Deering Zoning Ordinance as a repair, renovation, replacement, or expansion of
66 a non-conforming structure.

67
68 The second component of the request, for a variance from Section 4.1.1 of the Deering
69 Zoning Ordinance to authorize construction of accessory residential structures on the
70 property located at 745 White Gate Road, Tax Map 235, Lot 20, was **withdrawn without**
71 **prejudice.**

72
73 It was the general consensus of the Board that Section 4.1.1 of the Deering Zoning
74 Ordinance was not applicable, and while a variance may be required to authorize the
75 accessory residential structures, the Board was reluctant to act on the application without
76 first giving the applicant the opportunity to apply for a building permit, and to then appeal
77 to the Board if need be, with a renewed application which better addressed the unique
78 development proposal.

79
80 The Board approved the meeting minutes from May 9, 2023.

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

84
85 Respectfully submitted,

86
87 David LeFevre, Chairman