



**TOWN OF WAKEFIELD, NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT**

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**WAKEFIELD ZONING BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**May 22, 2012**

**Final**

Mr. Frothingham, Chairman, called the meeting to order at 7:00 PM.

MEMBERS		ALTERNATES		OTHERS	
George Frothingham, Chairman	X	Sharon Theiling	X	Arthur Capello, Code Enforcement Officer	X
Doug Stewart, Vice Chairman	X	John Napekoski	X	Michelle MacDonald, Secretary	X
Cecille Arnone	X	Steve Brown	X		
Judy Sjostrom	X				
John Crowell	X				

Also present were Kerry fox, Fox Survey Co., Lisa Dagenais, Beth Luke, Gerald Luke, and David Giunta.

**ROLL CALL & DESIGNATION OF ALTERNATES**

Following the Pledge of Allegiance, Chairman Frothingham asked the members of the Board to introduce themselves. He advised that all Board members are present and would hear the case. He explained that the Board reviews the checklist, and then invites the applicant to come forward and discuss the application, the Board will ask questions, and the Code Enforcement Office can also offer information. Once this is completed, the meeting is opened to the public to express opinions for and against the application, and for people to ask questions. Once the public hearing is closed, the voting members of the Board begin deliberations, and no further questions or comments can be taken from the applicants or public.

**PUBLIC HEARING**

1. **Case #2012-2 – GERALD & BETH LUKE – M109/L54 – Variance Application from Article 3, Table 2, (page 12) Minimum Setback in the Residential 2 Zone.** – At this time, the Board reviewed the application for completeness.

**MOTION:** To accept the application.  
**Made By:** Doug Stewart  
**Seconded by:** Cecille Arnone

**Discussion:** None  
**Vote:** Unanimous

Let the record state that there was a site walk conducted on said property prior to the meeting. Attendees were as follows: George Frothingham, Doug Stewart, Judy Sjostrom, John Crowell, Steve Brown, John Napekoski and Mr. Luke.

Chairman Frothingham invited Kerry Fox of Fox Survey Co. whom is representing Gerald and Beth Luke to approach the table.

Mr. Fox asked if the Board had copies of the plan and if they had conducted a site walk on the property. All members replied, yes. Mr. Fox then introduced Mr. and Mrs. Luke as well as Lisa Dagenais and David Giunta who were both there in support of the Luke's.

Mr. Fox stated that his involvement started back in the spring of this year. He had been called in to perform a foundation certification on the building and after surveying the boundaries and manually locating the home it appeared there was a slight encroachment at the corner boundary line. He stated that this is a non-conforming lot so it has the 10' sideline setback. Mr. Fox stated another thing that was noticed at the time was the deck added to the front of the building. He spoke to Mr. Capello as to whether this should be included in the variance because of the fact that Mr. Fox knew that this permit had been pulled over 10 years ago. Mr. Fox had no idea what the water level was at Lake Ivanhoe at the time so there was a question about what to do concerning the deck.

Mr. Fox stated that on the plan he has a contour for the 596' reference line which was what information he found by going on the State of New Hampshire website and looking at a shoreline application. Mr. Fox mentioned that he talked to Mark Stephens who is the Land Agent for the Water Resources Department at the State of New Hampshire about Lake Ivanhoe in reference to the 596' and was told by Mr. Stephens that the 596' is not correct. The only time it would be used is if a shoreline application was being submitted. The State of New Hampshire has not yet determined a reference line for Lake Ivanhoe at this time. It was Mr. Fox's feeling that the State probably went out to Lake Ivanhoe, looked for surface water and based the 30' setback on those findings. Mr. Fox stated "this is what we are looking at today."

Mr. Fox feels that Mr. Luke tried to do his best to get this placed in but stated "as you can see if you pull a 30' setback from the 10' sideline setback it makes for a pretty small building envelope". Mr. Fox felt this was easy enough to be cut and dry for the encroachment issue with the 10' setback but stated he doesn't know how the ZBA is going to deal with the deck encroachment. Mr. Frothingham asked Mr. Fox if the State had any issues with the deck. Mr. Fox stated he doesn't believe so. Apparently they have a 50' setback from surface water. Mr. Stewart asked Mr. Fox what the measurement of the high water mark was when he went out in the spring. He wanted to know if it was close to what Mr. Fox stated on the plan. Mr. Fox stated he hasn't been out to Lake Ivanhoe since the spring so he is not sure what the water level looks like today verse the spring. Mr. Fox did state that when he went there in the spring the water level seemed pretty

close to what he would have called a full lake elevation so he felt his setbacks were pretty close. Mr. Stewart asked Mr. Fox if he was just talking about a couple of feet and not 10'. Mr. Fox replied just a couple of feet. Actually when Mr. Stephens mentioned bringing it up another foot to foot and a half I said "that would almost cover Luke's entire plot of land." Mr. Frothingham asked if there were any more questions.

Mr. Fox stated that he had a couple of letters from abutters. One was from Dorothy Koster and the other from David Dagenais. Mr. Frothingham stated the letter from Dorothy Koster said that she did not object should the Town wish to grant the variance to Gerald and Beth Luke. And David Dagenais also does not object. Both letters would become part of the record. Mr. Frothingham asked if there were any more questions. Hearing none. He asked the public if anyone would like to speak against the applicant. Hearing none. Mr. Frothingham asked if anyone wanted to speak for the applicant.

Mr. Frothingham asked the abutter to state his name for the record. Abutter stated his name was Dave Guinta and that he lived on Lake Ivanhoe on the opposite side of Luke's property. Mr. Guinta stated he had been working with Mark Stephens over the past three years. Mr. Stephens came on board to help because of the high water levels we have been having for a few years. No one knew what the level of the water should have been. Mr. Guinta continued with saying the State had put water markers in the Lake and took samples from the tress to see what the winters entailed. Mr. Guinta stated that more important the high water level in Lake Ivanhoe is due to the shape of the lake. What seems to be happening is property owners are putting up walls to protect their properties during the rainy season which is causing the lake to change its shape. Mr. Guinta stated that he had an oak tree that was growing out of the water which has gained him water frontage but has caused loss of land. Mr. Guinta referred to a picture that showed a sandy beach that was Luke's property. As you can see the water is quite low but now the water level is quite high. Mr. Guinta also referred to an 1893 USGS map that showed a stream going from Lake Ivanhoe to Great East Lake. Mr. Guinta stated that the stream was no longer there.

Mrs. Theiling feels that the Board may run into a lot of cases like this where a property owner has done something without a permit or a law has changed. She feels the new property owner should not have to pay the penalty. Mr. Frothingham asked if anyone else would like to speak. Mr. Luke stated the only thing that he would like to add would be that Ivanhoe is not dam controlled in anyway. The lake has had several years with alarming low water, when he first built and then they had several years of alarming high water where Mr. Luke had 6 to 8 inches of water in his cabin. Mr. Luke feels that there is a tremendous amount of fluctuation.

Mr. Frothingham asked if there were any more questions or comments. Hearing none Chairman Frothingham closed the Public Hearing at 7:23 pm. He stated that all 5 members of the Board were present and that they will be the only ones voting.

Mr. Frothingham asked the Board if anyone would like to make a comment or ask a question. Mr. Stewart felt what the Luke's were asking for was reasonable giving the circumstances. Mr. Stewart stated that for one it sounds like where the high water should be has been in question for quite some time, as for the back corner the Board can see where that could have been a mistake and it was done 10 years ago to ask the Luke's to do something to change that seemed to Mr. Stewart to be unreasonable. Mr. Stewart stated he was in favor of granting the variance. Both Mrs. Arnone and Mrs. Sjostrom agreed.

Mr. Frothingham stated that it seemed there was no controversy in the Board. The Board was supposed to consider the 5 criteria for granting the variance. Mr. Fox had made some responses in writing addressing all 5 criteria. Mr. Frothingham asked the board if they looked at them or if they have anything to add. Mr. Stewart stated that he read them and feels that it explains and provides reasons. Mr. Frothingham asked if it was correct to assume that Mr. Fox had addressed all 5 criteria and the Board had read them and had no objection. A motion was made.

**MOTION:** To accept the 5 criteria that has been given.  
**Made By:** Judy Sjostrom  
**Seconded by:** Cecille Arnone  
**Discussion:** None  
**Vote:** Unanimous

Mr. Frothingham asked the Board if they should grant the variance. He stated that there were 3 corners that are of encroachment so the Board needed to be clear they are granting variance for all 3 corners. A motion was made.

**MOTION:** To grant variance for all three corners (one corner is the house the other two are the deck)  
**Made by:** Cecille Arnone  
**Seconded by:** Doug Stewart  
**Discussion:** Mr. Napekoski stated he wanted to clarify that one of the corners was the house and the other two corners were the deck just so that it is clear in the variance exactly what the Board is granting.  
**Vote:** Unanimous

Mr. Frothingham explained that any interested person could contest this decision within 30 days so it would be 30 days before the Zoning Board's decision is final. He mentioned that the Luke's will be receiving a Notice of Decision from the Land Use Office. Hearing was closed at 7:30 pm

### **APPROVAL OF MINUTES**

After a brief review there was a motion to accept the minutes from February 27, 2012

**MOTION:** To accept the minutes from February 27, 2012  
**Made by:** Doug Stewart  
**Seconded by:** Cecille Arnone  
**Discussion:** None  
**Vote:** Unanimous

**OLD BUSINESS**

**1. Meeting minutes from September 19, 2011**

Mr. Frothingham stated that the corrected minutes from September 19, 2011 have been passed out. He asked if everyone had a chance to review them. Mr. Frothingham believed that all of the corrections had been made. A motion was made.

**MOTION:** To accept the minutes from September 19, 2011 as written  
**Made by:** Doug Stewart  
**Seconded by:** Judy Sjostrom  
**Discussion:** None  
**Vote:** Unanimous

**NEW BUSINESS**

There was no new business to come before the Board.

**ADJOURNMENT**

**MOTION:** To adjourn  
**Made by:** Cecille Arnone  
**Seconded by:** Judy Sjostrom  
**Discussion:** None  
**Vote:** Unanimous

Respectfully submitted,

*Michelle MacDonald*

**Michelle MacDonald, Secretary**  
Zoning Board of Adjustment