Mr. Daly opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at 41 Depot Road (Pound School) on April 28, 2016 at 7:00 pm.

Members Attending:  Chairman John Daly, Vice Chairman Catherine Belcher, Dave Ciardelli, Paul Falman, and Tim Allen.

Also present:  Ms. Pamela DeAngelo, Mr. Chris Caplice, Mrs. Kristin Caplice, Ms. Ashley Scott, Attorney - CBZ Law, East Kingston Building Inspector John Moreau and East Kingston Conservation Commission Chairman Dennis Quintal.

Case #16-01. Pamela DeAngelo, 18 Cove Road, East Kingston, NH (MBL 02-01-25). The applicant is seeking a variance from Article XXI, Section E in order to permit the expansion of a non-conforming structure by the addition of an enlarged deck.

Mr. Daly explained the Board would hear Ms. DeAngelo's summary of what she wanted to do and how she meets the criteria and ask any questions they may have. Then the Board will close the public part of the hearing, have discussion on the application and make a decision.

Mr. Daly asked Ms. DeAngelo to review her application for the Board and explain how she meets the criteria.

Ms. DeAngelo explained she had bought the property with the intention of living there on a full time basis. She was in the process of extensive inside repairs as the house had been vacant for a very long time and needed much work. Outside she intends to install new siding on the house and a custom railing for the deck. There is 600sf of living space in the house. The outside deck was constructed incorrectly, not constructed with pressure-treated wood, in disrepair, falling apart and a safety issue.

As there was such a small space inside the house, she ascertained it would be to her benefit to replace and enlarge the outside deck, both giving her more "living space" to enjoy the views, increasing the value of the house, and helping to make the house beautiful again. If the value of the house increased, she ascertained her taxes to the Town would also.

The original deck was 6 x 12 and she increased the size to 8 x 24 (the length of the house). The deck is now more in scale with the size of the house, built to code, and does not encroach on the front lot line. It is actually set back 4' further from the lot line than the original deck. There was a small deck on the west side of the house which she has removed and replaced with stairs. There are wetlands at the rear of the property and a raised septic system, so there is no other place to install the deck.

She had built the deck and the Building Inspector, while conducting an inspection for another property, ascertained she needed to conform to Town setbacks. He immediately had her stop all work and directed her to the Zoning Board to apply for a variance. She made application to the ZBA and she was here before the Board to hopefully get the variance needed.

She had built the deck to code with sono tubes and pressure treated wood, and a PVC railing with black spindles. Her intent was to make the house and the neighborhood better and get the best use of her property.
Mr. Daly asked Ms. DeAngelo to address the individual criteria.

1. **Granting the variance would not be contrary to the public interest because:**

   The house has been vacant for a number of years. She is going to live there year-round so she is redoing the entire house and is trying to make it look nice. The deck is part of finishing off the house.

2. **The spirit of the ordinance would be observed because:**

   Although the deck comes close to the lot line, it is in scale with the house. It improves the house and the whole neighborhood. It will be especially nice once the siding is on.

Mr. Daly explained the only reason Ms. DeAngelo is before them tonight is because she has an undersized lot, called a legal non-conforming use lot. Any time that use is expanded, it requires a variance from the ZBA.

3. **Granting the variance would do substantial justice because:**

   Ms. DeAngelo understands now her lot is non-conforming but explained she is making the house and the property look better. She noted there were no abutters present who objected to what she was proposing to do. She believes what she wants to do to make sense, does not encroach on anyone else's property, and improves the neighborhood.

Mr. Falman asked Ms. DeAngelo if she knew the lot was non-conforming when she purchased it; she stated she did not. That fact was never disclosed to her and it says nothing on the property card that it is. She has no plans to enlarge the house itself, only to fix it up inside and out. She only decided to replace the deck when she saw what bad shape it was in.

4. **For the following reasons, the values of the surrounding properties would not be diminished:**

   She noted she had spent a considerable amount of money having the lot surveyed so she could ask for the variance, and thinks the money is well spent for the property and the neighborhood. She feels her improvements will help increase her property value and that of her neighbors.

5. **Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

   Mr. Daly asked how this lot was any different than any other lot that would constitute a hardship.

   Ms. DeAngelo explained it is a small lot and a very small house - 600 sf. She views the deck as an extension of the house that will help her to enjoy her property to the fullest extent possible (the woods and the lake). Because of the size of the lot and the location of the wetlands and the existing septic system, there would be nowhere else she could place the deck.

Chairman Daly noted there were no abutters present.

Mr. Daly asked for Board comment.

Mr. Allen asked if the existing smaller deck was functional. Ms. DeAngelo answered it was a big mess and only good to walk out onto. There also had been a 5 x 6 deck on the side of the house which she replaced with a set of stairs.

Mr. Ciardelli had viewed the house and stated anything that was done to it would be a big improvement. He noted there was already a deck there and if it were not for the non-conforming issue, what she wanted to do would have been fine to do without a variance. What she designed was in scale to the house.

Mr. Falman asked if the old deck was just an egress point rather than a useable surface? Mrs. DeAngelo answered it was. It was more like a landing than a functional deck.

Mrs. Belcher asked if the house was abandoned when Mrs. DeAngelo purchased it; Mrs. DeAngelo stated it was. Mrs. Belcher referred to the section of the ordinance which states that re-establishment after abandonment meant it would need
to be brought up to current code. She knows the property is protected as it is a pre-existing, non-conforming lot but asked if there were any issues with converting a seasonal home to a year-end living space. Did this constitute changing the use? And if so, would there need to be more than one variance?

Mr. Daly opined they were not bound to approach the question in that manner.

Mrs. DeAngelo noted about 10 years ago before abandoning the property, the owners did live there year-round and did some improvements which she was re-doing. Also they had installed a new septic system at that time.

Mrs. Belcher asked what the setback from the existing deck is from the roadway? Mrs. DeAngelo noted that although the new deck is larger than the old once was, it is further away from the roadway. The closest portion of the deck is 4.2’ from the lot line but it is a little further to the edge of the road as the road curves in front of that portion of the house.

Mr. Falman confirmed Mrs. DeAngelo was going to live there year-round. She stated she was but since the sale of her house where she is presently living fell through, it will be a while. After she sells her house, she will live at Cove Road year-round.

Mr. Daly asked if the Building Inspector had anything to add. Mr. Moreau noted Mrs. DeAngelo was definitively improving the house, and the only reason he had referred her to the ZBA was because of the non-conformity and the setback issues.

Mr. Daly asked if the Conservation Chairman had anything to add. Mr. Quintal did note it was possible the decision the ZBA came to could be setting a precedence. Mrs. Belcher replied variances were on a case-by-case basis and would not be setting a precedence.

Mr. Daly closed the Public Hearing for Board Discussion. The Board went through the criteria.

1. **Granting the variance would or would not be contrary to the public interest because:**

   Mrs. Belcher opined it would not be contrary to the public interest as the use is consistent with surrounding properties and the improvements will increase the value of the house and improve the neighborhood.

2. **The spirit of the ordinance would or would not be observed because:**

   Mrs. Belcher stated the spirit of the ordinance is that pre-existing, non-conforming properties can be utilized to their fullest extent, especially if there was a previous use as a dwelling, seasonal or year-round. That use would still be met by allowing the variance.

3. **Granting the variance would/would not do substantial justice because:**

   Mr. Falman stated granting the variance would do substantial justice as it enhances the quality of the home itself which adds to the general setting and value of the neighborhood, and allows for a more practical and safer entry into the house. Mrs. Belcher noted as the house is only 600 sf, it is like an addition to her living space. Mr. Allen noted a 6’ deck is too small, especially in the wintertime, for egress purposes. He also noted there was not enough room at the back of the property to add a deck and this deck is not any closer to the road that the old deck.

4. **For the following reasons, the values of the surrounding properties would/would not be diminished:**

   Mr. Daly opined there was no question the values would not be diminished but enhanced.

5. **Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

   a) there (is - is not) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

   Mr. Daly noted the only uniqueness of this property he could see is the size of the lot, the dimensions and how it's situated. Mr. Falman agreed. Mrs. Belcher noted that most if not all of the other lots on Cove Road are also pre-existing, non-conforming lots, so she does not find that unique.
What Mrs. Belcher does find unique was the size of the home at 600 sf. The deck would allow Mrs. DeAngelo the full enjoyment of her home. Mr. Ciardelli noted the previous deck was not scaled to the house and what Mrs. DeAngelo has replaced it with is more in scale with the house.

(b) the proposed use (is - is not) a reasonable one because:

Mr. Daly opined the above mentioned reasons make it unique in some way, and the proposed use is reasonable.

**Board Vote**

1. Granting the variance would not be contrary to the public interest.

   Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not; Mr. Allen - Would not. The vote was unanimous.

2. The spirit of the ordinance would be observed because of the use of the property as a year-round dwelling.

   Mrs. Belcher reiterated the spirit of the ordinance is that pre-existing, non-conforming properties can be utilized to their fullest extent, especially if there was a previous use as a dwelling, seasonal or year-round.

   Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would. Mr. Allen - Would. The vote was unanimous.

3. Granting the variance would do substantial justice.

   Mr. Daly stated it enhances the quality of the property, the overall area and is an improvement.

   Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would. Mr. Allen - Would. The vote was unanimous.

4. The values of the surrounding properties would not be diminished.

   Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not. Mr. Allen - Would not. The vote was unanimous.

5. a) There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.

   Mr. Daly noted the size of the lot, the dimensions and how the home is situated on the lot makes it unique.

   Mr. Ciardelli - Is not; Mrs. Belcher - Is not; Mr. Daly - Is not; Mr. Falman - Is not. Mr. Allen - Is not. The vote was unanimous.

   b) The proposed use is a reasonable use. All members agreed the proposed use is a reasonable one.

   Mr. Ciardelli - reasonable use; Mrs. Belcher - reasonable use; Mr. Daly - reasonable use; Mr. Falman - reasonable use. Mr. Allen - reasonable use. The vote was unanimous.

Mr. Daly asked for a motion.

**MOTION:** Mr. Falman MOVED the Zoning Board grant the variance request for MBL 02-01-25, 18 Cove Road for the addition of the enlarged deck as presented as the Board believes, based on the evidence, it satisfactorily meets the criteria for variance from Article XXI.E. Mr. Ciardelli seconded. The vote was unanimous.

Mr. Daly informed Mr. DeAngelo she had been granted their variance and would be receiving a copy of the decision.

Mrs. DeAngelo thanked the Board.
**Case #16-02.** Christopher and Kristin Caplice, 4 Indian Road, East Kingston, NH (MBL 02-01-19). The applicants are seeking a variance from Article XXI, Section E in order to permit the addition of a deck to an existing non-conforming structure.

Mr. Daly asked Mr. and Mrs. Caplice to review their application and explain how they meet the variance conditions.

The Caplice's handed out a packet of information to the Board, some of which they already had. Mr. Caplice explained they would like to build a raised deck over most of the existing concrete patio at the rear of their home. The edge of the existing patio where it is closest to the water is 17'; the proposed deck would be 21' from the water which is 4 feet further away. The present landing to exit the house is 4' x 4'.

The deck they are proposing would be raised 12"-14" off the ground and made of Aztek material with sono tubes for the foundation. It would be 12' deep and the length of the house (34') and would not extend wider than the width of the house. They will install a low-profile cable railing around the edge of the deck to contain their dogs.

Four feet of the existing concrete patio will not be covered by the new deck. It is 26' to the ROW on the East and 32' to the property line on the West side of the house. As the line of the deck and the property line on the water are slightly skewed and not perpendicular to each other, they are asking for a 1' variance on the West side and almost a 4' variance on the East side. Mrs. Caplice noted the patio was not in great shape and had been patched at some time and was uneven and crumbling.

Mr. Falman asked if they were going to use the concrete patio as the foundation for the deck posts. Mr. Caplice stated they were not; the posts would need to go through the patio. They stated they would remove the 4' of patio that would not be covered by the deck and plant grass there if that was the decision of the Board. They were unsure if they were allowed to remove the existing patio because of the non-conformity. They had been to DES and who stated removing the existing patio would not be an issue for permeability one way or the other since it was already there, but they were also not opposed to its removal.

Mr. Ciardelli had been to the site and stated he could not see the patio from the road. The Caplice's stated only one neighbor could see the patio if he walked to the rear of his property, and other than that it was only be visible from the water.

Mrs. Caplice stated Attorney Ashley Scott from Cronin Bisson & Zalinsky PC was present as their advisor on NH real estate law. They argued that since the proposed deck would be within the footprint of the existing patio, the variance is not really needed. Pre-existing non-conformities can continue as long as they are not substantially different in nature or use. They also suggested that the patio is not part of a building and as such would only need to be 10' from existing property lines and not 25'.

Mr. Daly restated their argument that the patio was not part of the building. He said that he does not agree. He explained they were not asking for the variance just for the deck; the deck is what puts them into the category of needing a variance. What they were doing is enlarging an existing, non-conforming use and once you do that, you need a variance. Mr. Daly explained if they persist with the argument that it is not part of the building and they want it considered as a separate structure, it would put them under a different category - the setback of any structure from poorly drained soil which is 30'. That would need to be separately noticed. He noted the fact it is taxed separately on the tax card as a feature does not mean it is a separate structure and that may be where their misunderstanding is. Mrs. Belcher also agrees it is part of the building.

Mrs. Belcher addressed the statement about the footprint of the concrete pad. Their argument is they were adding something to the house that is less than what currently exists. Mr. Daly opined that the fact that the proposed deck is not the same size as the existing patio is not relevant in this case.

Ms. Ashley Scott, Attorney, asked for clarification - the patio was not part of the house for purposes of considering pre-existing non-conformity and the fact that the deck is smaller in size does not make a difference. Mr. Daly stated that was correct. Mr. Daly stated he does not see the patio as a separate structure. The deck would be part of the structure and thereby is part of the non-conforming use they are proposing to expand.

The Caplice's decided to proceed with the request for variance.
Mrs. Caplice reviewed the points for the criteria for the Board.

1. **Granting the variance would not be contrary to the public interest because:**

   Addressing the criteria, the proposed deck does not alter the character of the neighborhood, would be further from the water, is more attractive than the concrete pad, and does not threaten the health, safety or general welfare of the neighbors or the neighborhood. It is low profile and does not obstruct any neighbor's access to light or views, increases the value of the property and our taxes, and complies the state environmental law.

2. **The spirit of the ordinance would be observed because:**

   The proposed deck is smaller than the existing patio, will be further back from the water, does not interfere with neighbors visibility or block sunlight, and would not alter the essential character of the neighborhood as it is not a new use. Water facing decks are common in the area.

3. **Granting the variance would do substantial justice because:**

   The proposed deck is a substantial improvement to the property and property value, is a safer alternative to the existing crumbling concrete patio, and provides full use of the property for its intended purpose. The Caplice's don’t believe there is a public interest in banning a reasonably sized, attractive deck in a lakeside community that is essentially already a neighborhood of water-facing decks. They bought the property so they could enjoy the water views.

4. **For the following reasons, the values of the surrounding properties would not be diminished:**

   A new deck will be far more attractive than the existing concrete patio which is crumbling in places and has several unsightly patches. The proposed deck has been professionally designed, will be professionally installed, will be made out of high quality PVC/composite material. The railing material is the lightest, lowest profile cable they could find, so that it does not impact any view to the water. They believe it is very tastefully designed and will probably cost around $15k, so they are not skimping on quality. Adding a deck will increase the value of the house and the taxes they pay, and none of the neighbors have a problem with it.

5. **Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

   No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

   Our property is unique because our house is on a 0.19 acre lot, and the outdoor space is relatively limited. Any deck for such a small lot would have to be located where the concrete patio already is, in the location we’ve proposed. The proposed location is literally the only place on our property where we can have a deck and the only viable option. The property is actually a small, curved peninsula and if a deck were to be built that is 25 feet from the water at all points, it could be no more than 8 feet deep which is not functional. We would be willing to remove the 2-3 feet of the concrete apron that will extend beyond the proposed deck. We need the enclosure to create a safe space for our dogs from the wandering dog next door.

   **The proposed use is a reasonable one because:**

   We bought the property in 2014 specifically so we could improve the outdoor area, enabling us to fully enjoy the property’s beautiful position on a small peninsula on Powwow Pond. We think it is reasonable to allow us to have a deck similar to those of other homeowners on Powwow Pond and it would not frustrate the purpose of the ordinance. We don’t think there is any public good resulting from denying our permit that would outweigh the harm to us as landowners by
preventing us from fully enjoying the waterfront property. The deck will actually improve the aesthetics and standards of the property and other nearby properties. The proposed plan will also reduce the existing footprint of the concrete patio and its outer edge will actually be further from the water than the existing non-conformity. We are also willing to cede the existing non-conformity that extends beyond the proposed deck.

In summary, the proposed deck is a smaller, safer, more easily maintainable and prettier version of what is already there and it fits entirely within the footprint of the existing concrete patio. Our proposal is completely consistent with other properties in the neighborhood and we believe prohibiting the deck would interfere with our reasonable use of the outdoor area of our property. We do not believe the slight variance from the zoning ordinance we are seeking for our proposed deck would sacrifice its spirit or purpose.

Mr. Daly asked if the Board had any questions. Mr. Ciardelli asked about the height of the proposed deck in comparison to the existing landing. Mr. Caplice stated the new deck would be lower than the existing landing and the railing would also be lower. Mr. Ciardelli noted it was one of the more attractive houses on the road and the deck would only be seen by one neighbor and from the water.

Mr. Allen asked about the distinction between patio and deck. At what height does it change from a patio to a deck? It was noted the patio was not attached to the house, but the deck would be. Mr. Moreau considers the patio landscaping, and a deck is attached to a home. It was not a matter of height, it’s a matter of being attached.

Mr. Moreau asked for more clarification on the Shoreland Protection Act and DES. The Caplice's provided a copy of the Shoreland Permit from DES to Mr. Moreau.

Mr. Quintal stated one of the most important reasons for the rules and regulations was to protect the water quality of the river. It is an important natural resource and needs to be protected. Money is spent on a yearly basis treating for milfoil and testing water quality. He would hope the Caplice's interest and concern also would be to protect the water by not over-fertilizing the lawn and adding vegetation as much as they can within the 50' Shoreland Protection area which is critical for treating stormwater runoff, runoff from driveways and parking lots, roof runoff, etc. Taking off the concrete pad will add more infiltration into the ground. Mrs. Caplice noted they have a landscape plan in place to add trees and shrubs after the deck is built.

Mr. Daly asked what they would have under the deck once they remove the concrete pad. Mr. Quintal said crushed stone would work nicely.

Mrs. Belcher asked if Mr. Quintal was satisfied with the approval from the DES; Mr. Quintal noted it was an approval by notification which included conditions of erosion and siltation control measures.

Mr. Allen asked if the Caplice's would like to review how they felt they met the hardship question. Mrs. Caplice stated the size lot was very small at .19 acres, the area proposed was the only viable place to have the deck, the property was unique as it was located on a peninsula, and if they were held to the setbacks in the ordinance the deck would not be a size that was usable as a deck.

Mr. Daly closed the Public Hearing for Board Discussion. The Board went through the criteria.

1. **Granting the variance would or would not be contrary to the public interest because:**

   Mr. Ciardelli opined it would not be contrary to the public interest as it would be an improvement to the lot and to the neighborhood. Mr. Allen noted that granting the variance for the deck would allow the removal of the existing concrete patio, allowing for additional permeable area to reduce runoff. If the variance is not granted, the only way for the Caplice's to have a usable space would be to continue to have the patio which is a pervious area.

2. **The spirit of the ordinance would or would not be observed because:**
Mrs. Belcher stated the spirit of the ordinance would be observed in that as a pre-existing, non-conforming space the applicants would be allowed to have the fullest enjoyment of their space. Being on the water allows them enjoyment that is unique to other properties in town.
3. **Granting the variance would/not do substantial justice because:**

Mr. Falman stated granting the variance would do substantial justice because the existing concrete patio would be removed minimizing potential runoff into the pond, especially for the water quality. It would also improve the esthetics of the lot.

4. **For the following reasons, the values of the surrounding properties would/not be diminished:**

Mr. Daly opined the values would not be diminished since they were improving the property. Mrs. Belcher noted the property owners had taken into consideration the type of railings so as not to block views or light to the neighbors which shows the effort they have taken to minimize any obstructions.

5. **Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

   a) there (is - is not) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

   Mr. Daly opined that the size and dimensions of the lot, how the lot is shaped, and the fact that it is located on a peninsula, in taking all things into consideration, it is a unique property in this area and there is no fair and substantial relationship between this provision of the ordinance and what they are proposing. Mr. Falman noted also because of the orientation of the house, there would be nowhere else to locate the deck. Mr. Ciardelli stated it would be an improvement to take out the concrete pad and put in the deck which will reduce the hardship to the environment.

   b) the proposed use (is - is not) a reasonable one because:

   Mr. Daly opined the above mentioned reasons make it unique, and the proposed use is a reasonable use.

**Board Vote**

1. **Granting the variance would not be contrary to the public interest.**

   Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not. Mr. Allen - Would not. The vote was unanimous.

2. **The spirit of the ordinance would be observed.**

   Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would. Mr. Allen - Would. The vote was unanimous.

3. **Granting the variance would do substantial justice.**

   Mr. Daly stated approval would include the removal of the concrete pad.

   Mr. Ciardelli - Would; Mrs. Belcher - Would; Mr. Daly - Would; Mr. Falman - Would. Mr. Allen - Would. The vote was unanimous.

4. **The values of the surrounding properties would not be diminished.**

   Mr. Ciardelli - Would not; Mrs. Belcher - Would not; Mr. Daly - Would not; Mr. Falman - Would not. Mr. Allen - Would not. The vote was unanimous.

5. **a) There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property, and b) The proposed use is a reasonable use.**
Mr. Daly noted there is a hardship due to the uniqueness of the property, there is no and fair and substantial relationship to the specific provision of the ordinance and the use is reasonable.

Mr. Ciardelli - Is not; Mrs. Belcher - Is not; Mr. Daly - Is not; Mr. Falman - Is not. Mr. Allen - Is not
The vote was unanimous.

Mr. Daly asked for a motion.

**MOTION:** Mr. Allen **MOVED** the Zoning Board grant the variance request for MBL 02-01-19, 4 Indian Road for the addition of a deck as presented on the condition that the existing concrete patio will be removed. The Board believes, based on the evidence, it satisfactorily meets the criteria for variance from Article XXI.E. Mr. Ciardelli seconded. The vote was unanimous.

Mr. Daly informed the Caplices they had been granted their variance and would be receiving a copy of the decision.

Mr. & Mrs. Caplice thanked the Board.

The meeting was adjourned at 8:30 PM.

Respectfully submitted,

**Barbara White**

Barbara White  
Recording Secretary

John Daly  
Chairman