

**Moultonborough Zoning Board of Adjustment
P.O. Box 139
Moultonborough, NH 03254**

Regular Meeting

August 17, 2016

Minutes

Present: Members: Bob Stephens, Ken Bickford, Bob Zewski, Robert St. Peter
 Alternates: Nick DeMeo, Richard Jenny, Jerry Hopkins
Excused: Member: Russ Nolin
 Alternate: Paul Onthank
Staff Present: Administrative Assistant, Bonnie Whitney

I. Call to Order

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the board to the public. He appointed Jerry Hopkins to sit on the board with full voting privileges for Public Hearing #1; Richard Jenny to sit on the board with full voting privileges for Public Hearing #2; and Nick DeMeo to sit on the board with full voting privileges for Public Hearing #3, all in place of missing member Russ Nolin.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of August 3rd, 2016, as written, seconded by Mr. DeMeo, carried unanimously.

IV. Hearings

1. Leon & Cheryl Haydon (252-23) (Winaukee Road)
 Variance from Article III.B.1 & B.3

Chairman Stephens stated that this was a rehearing for Leon and Cheryl Haydon for a request for a Variance from Article III.B.1 & B.3.

Attorney Christopher of Boldt of Donahue, Tucker & Ciandella, who represents the applicants, along with Leon and Cheryl Haydon were in attendance. Attorney Boldt presented the application for rehearing as a result of a Motion that was granted in June. Per the request in June, they have provided a survey of the property. Attorney Boldt indicated that this was a very small lot, 0.05 acres, which was carved out in 1992 with the Crosswinds plan (which was included in the member's packets) with the notation that it can't be a dwelling lot and for storage purposes of the Haydon's associated lot across Winaukee Road.

The proposal is to build adjacent to the existing 1800's era barn, a 22 ft. x 24 ft. garage. Attorney Boldt referred to the plan which shows a portion of the existing barn in what the Town considers the right-of-way (ROW) for Winaukee Road. The Proposed garage will be located wholly within the confines of the Property. It will be back behind the plain of the existing barn. The proposal is slightly smaller than the original application, and will be approximately 29' from the centerline of Winaukee

Road, 6.5' from the side Property line and 2.9' from the rear Property line at the closest points. They have both the DPW and Police Chief's comments stating that the larger proposal was not creating a safety concern. Included in the packet was a letter from the Crosswinds Association President, Mr. Cousins indicating that the Association has no problem. Attorney Boldt stated that the Property is unique as it is surrounded by the Associations septic field.

Attorney Boldt stated that he would address each of the criteria for the granting of the variance, as outlined in his materials, as how they meet the criteria. The original application had only concern on the unnecessary hardship. He then answered any questions from the board.

Mr. Zewski commented that at the original hearing there were two issues, first there was not a survey, therefore they did not know where new structure would be, and second one member asked for advice from council, where those the two issues? Chairman Stephens replied yes. The issue was, did the applicant do the survey first, or do you condition a potential approval based on having a survey that the Code Enforcement Officer could verify location. In addition to that, because the Board did not have council available at the time of the request for rehearing, the Board opted to grant the rehearing. Subsequently the Chair presented to council, the entire project file, and he rendered his opinion, which was provided to members previously to tonight's meeting, with the notation to not have conversation on the opinion as it was still considered attorney/client information.

Chairman Stephens asked if members had any questions regarding Attorney Serge's opinion. Members indicated that his opinion addressed all of their questions. The Chair polled the Board, asking if they had any further questions or concerns at this time. There were none.

Mr. Hopkins asked Attorney Boldt to expand on the criteria relating to Spirit of the Ordinance, in which he did. Mr. Hopkins questioned the proposed setbacks, and it was noted the front setback was one (1) foot. Mr. Hopkins questioned what type of roofing material was proposed for the structure. Mr. Haydon stated it would be shingles. Mr. Hopkins noted that water from the roof would runoff into the ROW, and questioned if there were any provisions made for rainwater collection on the town property portion? Attorney Boldt stated that they have not had that thought in prior conversations with the Town. Attorney Boldt questioned if they were looking for gutters with a drain line that comes down? Mr. Hopkins replied he didn't know. That he has never seen any proposed to be built this close to any property line. Mr. Haydon stated that he would have gutters on the front with the water going off to the side. If the Board were so inclined to grant the Variance, this would become a condition of approval. This opened a brief discussion regarding the apron on the front of the garage, as well as how the applicant will construct the apron, footings etc. Mr. Haydon indicated the apron would be stone.

Mr. Stephens opened the hearing for public input at this time. Grayland Cousins of Crosswinds On Winnepesaukee Association spoke on behalf of the Association stating the Board of Directors have written in support of the Variance Application.

Mr. Stephens asked if there were any questions from the board at this time. It was noted that there were none. The board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:15 PM and came out of deliberative session at 7:23 PM.

There was no further input from the Board or public. The voting members were Bob S., Ken, Bob Z., Rob and Jerry.

Motion: Mr. Zewski moved to grant the request for a variance from Article III.B.1 & B.3 for Leon & Cheryl Haydon, Tax Map 252, Lot 23, subject to the following condition: gutters along the front of the building along Winaukee Road, and further to close the public hearing and to direct staff to draft a formal Notice of Decision for Board discussion only, based

on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only and signed by the Chair at the next scheduled meeting.

Mr. Bickford stated that he would like to amend the motion by adding one additional condition to the approval, requiring the foundation being set by survey due to the close proximity to the road, barn and the remaining property lines. Members were in agreement with the proposed amendment, stating it would be a foundation certification.

Mr. Zewski amended his motion to include a second condition of approval that a foundation certification be prepared prior to construction.

Seconded by Mr. Bickford, motion passed, four (4) in favor (Stephens, Bickford, Zewski, St. Peter) and one (1) opposed (Hopkins).

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

The Chairman unseated Mr. Hopkins at this time and appointed Mr. Jenny with full voting privileges.

2. Joseph Fellini (92-23.3) (12 Sunrise Drive)
Variance from Article III.I

Chairman Stephens stated that this is a request for a variance to permit the average height of a structure to be 34 ft. 6 in. (as built), exceeding the overall allowed height of thirty-two (32) feet as described in the Moultonborough Zoning Ordinance.

Joseph Fellini was present this evening. Due to Mr. Fellini's hearing impairment, Joe Derba assisted Mr. Fellini in presenting his application for the variance for his property.

Chairman Stephens noted that the application is for a request for a height variance as the building was constructed at 34 ft. 6 in. The Chair noted a letter from the Code Enforcement Officer (CEO) defining how this came about. It is the opinion of the CEO that this was an honest error through a miscommunication. The site is flat, so there is no high or low to do an average height. Mr. Stephens read the CEO's letter of August 17th, 2016 stating his opinion why and how, if required, reducing the height of the building would not change height access as the windows and eaves will stay at the existing height.

Mr. Stephens stated that they have also received input from the Fire Chief. Chief Bengtson commented that he had discussed this issue with the Code Enforcement Officer and the consensus was that a variance should be allowed. He has viewed the occupancy and saw no problem with granting the variance to the structure as built. He went on to state the in granting the variance should not be construed as an endorsement for extending the building height beyond the maximum height of 32 feet.

There was a brief discussion of the type of roof system and it was stated for the record that it was a trussed roof system. Mr. Derba noted any modifications to the trusses would destroy the strength of the trusses.

Mr. Stephens opened the hearing for public input at this time. Kevin Quinlan, President of the Balmoral Homeowners Improvement Association spoke in favor of the granting of the Variance, noting that this appears to be an honest mistake, and that the structure fits the character of the surrounding new construction in Balmoral.

Mr. Stephens asked if there were any questions from the board at this time. It was noted that there were none. The board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:35 PM and came out of deliberative session at 7:41 PM.

There was no further input from the Board or public. The voting members were Bob S., Ken, Bob Z., Rob and Rich.

Motion: Mr. St. Peter moved to grant the request for a variance from Article III. I for Joseph Fellini, Tax Map 92, Lot 23.3, and further to close the public hearing and to direct staff to draft a formal Notice of Decision for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only and signed by the Chair at the next scheduled meeting, seconded by Mr. Zewski, motion passed, five (5) in favor (Stephens, Bickford, Zewski, St. Peter and Jenny) and none (0) opposed.

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

The Chairman unseated Mr. Jenny at this time and appointed Mr. DeMeo with full voting privileges.

3. Jon & Wendy Clattenburg (235-9) (Solomon Lane)
Variance from Article III – General Provisions

Chairman Stephens stated that this is a request for a variance to allow for the construction of an accessory structure (20' x 45' storage shed / barn) on a property that currently has no primary structure.

Jon & Wendy Clattenburg were present to present their Variance application. They stated that they own several properties in the Far Echo area, with a home on Kingswood Lane. They reside in Bow, NH and their plan is to sell their home in Bow, move into the home on Kingswood Lane for 6-9 months while they build a home on Solomon Lane. They're proposing to build the shed on Solomon Lane in advance of the home. They have a three bay shed now in Bow where they keep their tractor, lawn mower and other equipment that they would like to utilize on the property on Solomon Lane for upkeep while constructing is going on. They will reside on Kingswood Lane which they build the new home. If they are able to build the shed it would allow them to keep their equipment protected and safe, while keeping the lot looking nice while they build their permanent home. They would like to build the shed a few months in advance of building the house. They currently have an architect working on plans for the home and builders lined up to build it. They just need to sell their home in Bow first.

Mr. Zewski questioned if there was a well or septic system on the property. Mrs. Clattenburg stated no, noting there was a 3-bedroom septic design that was approved in the past, but has expired.

Noted with the application package was a sketch, which was taken from the Town's GIS map, showing the approximate location of the proposed shed and dwelling. Mrs. Clattenburg stated that the proposed shed would meet all setbacks, not infringing on any setbacks, roads, neighbors or wetlands.

Mrs. Clattenburg questioned why it is that you cannot build a shed before you can build a home. The Chairman stated that residential lots in Moultonborough are for a residential structure. A shed is defined by the State as an accessory structure. The ordinance doesn't allow for an accessory structure to be put on a piece of land without a primary residential structure. This is how the ordinance in the Town is written. A discussion ensued regarding how and when this was added to the ordinance. The applicant commented that there are many places in Town that have only an accessory structure. The Chair stated that it he had looked into this and it was in the ordinance when it was put into effect.

The discussion continued with what may or may not have been options in lieu of a variance. Members noted that they were struggling with the criteria for hardship and if granted may be setting a precedent. This went on at length with the applicant stating they did not feel that this would be precedent as they will be living in a primary residence within a few hundred feet of the location, and they cannot put their equipment on that lot, under cover, with the only way to do it is to put it on the lot that they're going to be building the permanent residence on. The Chair stated that those were two separate lots and they cannot take where they are living now and try to tie it in. They are two different things, and the Board is dealing with the Tax Map and Lot on the application.

Members discussed what was the hardship to the property? It's not the hardship to the applicant, it's the hardship that's caused by the uniqueness of the property. The applicant stated their hardship is the proximity to their other lot was their argument. The Chair commented that it appeared that the applicant and some members were trying to make the circumstances of the individual be the hardship as opposed to the conditions that exist are unique to the property. A Member questioned if the Board were to grant the request, could they place a condition of approval on the variance with a sunset clause on the shed. Saying that it was approved for two, three years, whatever without a house. The Chair did not see how this could be done. How could you tell them that if in two or three years they haven't built a house, that they must tear the barn down? Members asked questions relating to a building permit, if they could obtain a permit for both the house and barn and construct the barn first? These were questions better answered by the Code Enforcement Officer.

The applicant commented that she has read all of the provisions of the ordinance and still has the same question. She cannot find, nor can anyone she spoke with in the Town, where it says you have to have a primary residence prior to any auxiliary. She has spoken to the CEO and the Town Administrator.

After repeatedly coming back to the same thing, the hardship criteria, and in light that we do not have a Town Planner members stated that perhaps they need legal counsel. The Chair was in agreement, that Town Counsel may be better suited to give them a read on what some of the possibilities might be in terms of the hardship. Members were in agreement with the Chairman. The applicants were told that they could choose to proceed forward this evening, but based on the discussion had, the outcome may not be a favorable one.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The voting members were Bob S., Ken, Bob Z., Rob and Nick.

The Chairman will reach out to Counsel for his legal opinion based on the facts they have.

Motion: Mr. Stephens moved table the Public Hearing for Jon & Wendy Clattenburg (235-9) to September 7, 2016 to allow time for the Chairman seek legal input from Town Counsel, seconded by Mr. DeMeo, carried unanimously.

V. Correspondence

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the Decision letter for the August 3rd, 2016 denial of acceptance for a variance request for Leaman & Abigail Antone, for a parcel located at 528 Moultonboro Neck Road (192-14).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 3rd. There were no changes made to the draft.

Motion: Mr. DeMeo moved to approve the formal Decision Letter as written for Leaman & Abigail Antone, Tax Map 192, Lot 14 and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. St. Peter, motion passed, five (5) in favor (Stephens, Nolin, Zewski, St. Peter, DeMeo), and none (0) opposed.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the August 3rd, 2016 granting of a variance for Scott & Lisa Crabtree, for a parcel located at 32 Arrow Trail (Tax Map 189, Lot 17).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 3rd. There were no changes made to the draft.

Motion: Mr. Bickford moved to approve the formal Notice of Decision as written for Scott & Lisa Crabtree, Tax Map 189, Lot 17 and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, motion passed, five (5) in favor (Stephens, Nolin, Zewski, St. Peter, DeMeo), and none (0) opposed.

3. The Chairman noted that the members had received an e-mail from Selectman Paul Punturieri noting Board of Selectmen's position on video streaming meetings is to encourage all boards, particularly elected boards, to stream all meetings. The BoS asks the ZBA to consider streaming their meetings. Members discussed this briefly with mixed responses to the request. Members have requested the input and opinion from Council one way or the other.

4. Mr. Stephens noted the 2016 Municipal Law Lecture Series presented by the New Hampshire Municipal Association. Members were provided with information that included Dates, Locations and Times beginning in September.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:32 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant