

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

Regular Meeting

November 16, 2016

Minutes

Present: Members: Bob Stephens, Ken Bickford, Bob Zewski, Robert St. Peter, Russ Nolin
 Alternates: Nick DeMeo, Richard Jenny, Jerry Hopkins, 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.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of September 21st, 2016, as corrected, seconded by Mr. Bickford, carried unanimously.

IV. Hearings

1. Walter C. Jr., and Sarah J. Larson (131-30) (204 Wentworth Shores Road)
 Variance from Article III.B. 4

The Chair stated that this is a request for a shore land setback variance to allow for the construction of a screened deck 32' from the lake setback line, and an open deck 27' from the lake setback line, where a 50' setback is required.

Ashley Rowe, of Geometres Blue Hills, presented that application for variance on Tax Map 131, Lot 30. Mr. Rowe gave a brief overview of the existing conditions of the property as well as the proposed construction of a screened deck 32' from the water at its closest point, and an open deck 27' from the water at its closest point. Mr. Rowe addressed each of the criteria for the granting of a variance. He then answered any questions from the board.

Mr. Stephens asked if there were any questions from the board. Mr. Hopkins commented that Mr. Rowe had stated that there was a net reduction in impervious surface, asking if the house, not including the deck, was going to be the same size? Mr. Rowe stated that the house will be the same size, noting there is a table shown on the proposed conditions plan, which shows the calculations resulting in a net decrease of 32 sq. ft. The proposal is to remove all the decking which is behind the existing screen porch and behind the building. The proposal is to construct a screen deck on the northerly corner and the remainder to be an open deck.

Mr. Stephens opened the hearing for public input. It was noted that there were no members from the public in attendance for this hearing. Mr. Stephens closed the public input portion of the hearing.

Mr. Stephens asked if there were any questions from the board. 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 7:13 PM and came out of deliberative session at 7:53 PM.

Members noted their concerns with the possibility of stormwater runoff and suggested that a plan be prepared using Best Management Practices and stamped by a Professional Engineer that would mitigate their concerns. These would include gutters, stone under the entire deck area, as well as a stone drip line around the entire house. During the deliberative session Chairman Stephens noted that the Applicants agent had cited a 1973 case of Carter v. City of Nashua. The Chair had spoken with Town Counsel regarding this case, and they are of the opinion that it does not apply. The Board will consider, and apply, what the state statute cites now, in the RSA. It was the consensus of the Board that Criteria 5.B applied in this case.

Mr. Rowe commented that he agreed with the Board regarding the Unnecessary Hardship criteria, but noted his opposition to a requirement of a stormwater plan being stamped by a Professional Engineer. He stated that they have a licensed Wetland Scientist on staff that prepares plans for NH DES and that he would be willing to have a plan stamped by their Wetland Scientist. Members asked Mr. Rowe what he would propose for mitigation under the deck area. Mr. Rowe stated it would be a base layer of 12" coarse gravel, a second layer of 6" of sand, a layer of filter fabric, with 6" of crushed stone on top of the filter fabric, and the plans to be stamped by a licensed wetland scientist. This would be underneath the deck and screen porch, including areas within one foot around the perimeter of said structures.

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

Motion: Mr. Bickford moved to grant the request for a variance from Article III.B (4) for Walter C. Jr., and Sarah J. Larson, Tax Map 131, Lot 30, subject to the following conditions: 1) All best management practices be employed and to be shown a plan designed by a Certified Wetland Scientist that includes a stone drip edge around the entire deck, under all of the deck and to extend one (1) foot out from the deck; 2) The plan to be submitted to the Office of Development Services prior to the issuance of a building permit; 3) The Notice of Decision shall be recorded at the Carroll County Registry of Deeds; 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. St. Peter, motion passed, four (4) in favor (Stephens, Bickford, Zewski, St. Peter) and one (1) opposed (Nolin).

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

2. OM Moultonboro Realty Trust (142-1) (268 Whittier Highway)
Special Exception from Article VI.C

The Chair stated that this was an application for a special exception for relief from Article VI. C to allow construction and a mixed use facility (existing business and proposed residential apartment).

Mark McConkey presented the application for special exception. Mr. McConkey briefly described the proposed two-bedroom apartment to be located with the existing building formerly known as Fuller's Convenience Store. Mr. McConkey answered any questions from the board.

The Chair asked if there were any questions from the board. Mr. Nolin commented that they would need to update the septic system with the addition of the two-bedroom apartment. Mr. McConkey stated there are two state approved septic systems on the property and they need to make application to NH DES for the reuse of the existing space. This will be required as part of obtaining a building permit. Mr. McConkey stated that in his opinion there is more than enough capacity for the existing use, anticipated employees, possibility of continued food process and the apartment.

The Chair opened the hearing for public input. Abutter Mark Finnergan questioned if this request for special exception applied to the whole property, therefore giving them approval to build a two-bedroom house next to his property? If yes, then he was opposed to their request. A discussion ensued regarding this, with Mr. McConkey stating for the record that they were only asking for "Mixed Use" to be granted for the inside of the existing building. If in the future, a new owner wishes to pursue that, a new application would need to be filed. The location of the two-bedroom apartment will be in the garage extension towards the rear of the existing building. Mr. McConkey stated for the record that they are looking for the Mixed Use only to be contained in that area.

Jim Rollins, 45 Redding Lane, questioned if there is employee housing in Moultonborough, where employees live on site where they work? Mr. Rollins stated that a management position is a very low income position, and therefore is not a long-term position. He stated that the character of their neighborhood are families who have been there for many years and noted his concerns with this becoming transient housing.

The Chair closed the public input portion of the hearing.

The Chair asked if there were any additional questions from the board. It was noted there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 8:40 PM and came out of deliberative session at 8:47 PM.

Motion: Mr. Zewski moved to grant the request for OM Moultonboro Realty Trust (142-1) for a Special Exception from Article VI. A with the following conditions: 1) The applicant must meet all recommendations of the Fire Chief regarding Life Safety 101; 2) The Special Exception is limited to the two-bedroom apartment being located within the existing building, as presented; 3) This Notice of Decision shall be recorded at the Carroll County Registry of Deeds; 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. Bickford, motion passed, five (5) in favor (Stephens, Bickford, Nolin, Zewski, St. Peter) and none (0) opposed.

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

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

Chairman Stephens stated that this was an application for an Amendment to a Variance for Leon and Cheryl Haydon.

Attorney Christopher of Boldt of Donahue, Tucker & Ciandella, who represents the applicants, along with Leon and Cheryl Haydon were in attendance. Attorney Boldt stated they were sorry to have before the Board this evening. A key event took place on the project. When digging, they discovered that

the foundation of the existing barn was basically rubble, and could not allow the garage to be smack up against it. Unfortunately, the load of concrete was coming, and it has been built. They are here asking for forgiveness. Attorney Boldt state that they meet the same criteria as they met at prior hearing. They are a foot further from the road, which was a concern at that hearing. The Applicant has obtained the confirmation of support from the Crosswinds Association Board of Directors. Included in the application are two letters from the Applicant's contractors, one from the general contractor and one from the concrete contractor explaining the situation. Attorney Boldt stated that he could address each of the same criteria for the granting of the variance as indicated in his application. He would answer any questions from the Board. They believe that they still meet the criteria, they are still within the property, as shown on the "As-Built" plan prepared by David M. Dolan. The plan shows exactly where the garage is located and the difference from the Original Plan and the As-Built Plan. Attorney Boldt stated they were sorry, did not know then what they now know, and such it is. Attorney Boldt answered any questions from the board.

The Chair asked if there were any questions from the board. Mr. Hopkins commented that he was the only discerner before and questioned how they were going to attach this to the existing building. Mr. Haydon replied even though the garage is about a foot off the barn, the front, back and the roof will all be connected to the barn. It will appear to be connected. There will be a walkway from the garage to the barn with an empty space in between with a façade in the front and the back.

There was a lengthy discussion regarding the As-Built location of the foundation. Attorney Boldt noted that included in the application package was a table reflecting the key difference between the Original Plan and the As-Built Plan. Members noted the fact that they had specifically required that due to the small lot and the close-proximity to the road, barn and remaining property lines, that the foundation was to be set by survey. They expressed their frustration with the fact that this condition of approval was blatantly ignored. Mr. Haydon noted for the record that he took full responsibility for the actions of his contractors, apologizing to the members. Attorney Boldt asked how do they fix this problem if it's not by a variance? Members noted several ways in which this could have been avoided at the time when the foundation was being installed. The Chair summed up the situation at this point, noting that there is a non-conforming foundation to a requirement that was set forth in a previous variance. That is what exists today. Why it took place is a calamity of incompetence. Bad decision making and incompetence. He is not convinced that it was a willful intent to add additional space. The Applicant has submitted a variance request to approve a "new" variance request under the same circumstances.

There was a brief discussion as to what options were available at the time the foundation was being put in. If they applicant had stopped and came back to the Board, would they have approved it before the cement was poured? Does the fact that it's in, change the whole game and all the reasons that they approved the original variance? Would they suddenly not approve it because it's a foot to the right? The Chair stated that in his opinion the Board has one of two things to do. They can either go back and relook at this as a unique situation to itself, rehear it to what is there, or they can continue the hearing and he can seek Town Counsels opinion again. The Chair polled the Board and it was the consensus to hear the case this evening.

The Chair opened the hearing for public input. It was noted that there were no members from the public in attendance for this hearing. The Chair then closed the public input portion of the hearing.

The Chair asked if there were any questions from the board. 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 9:42 PM and came out of deliberative session at 9:52 PM.

During deliberative session, the Chair made the following suggestion when looking in the future. If the Board approves a variance that is conditioned upon pinning the foundation, then it is conditioned

that failure to comply with the requirements will result in the removal of any foundation or anything accomplished to bring it into compliance. Period. Mr. Nolin stated that he thought that went unsaid. Mr. Stephens stated yes, down the road in the future this should be a hard and fast decision. If you mess up and don't do what we approved you to do, this is the result. It will be removed. There is no punitive action that can be done now, but it can be made part of a future condition. Members again expressed their frustrations with this matter, stating that they had approved the original variance with specific conditions and that the applicant ignored them.

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

Motion: Mr. Zewski moved to grant the request for an amended variance from Article III.B.1 & B.3 for Leon & Cheryl Haydon, Tax Map 252, Lot 23, previously granted on August 17, 2016, and 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. St. Peter, motion passed, four (4) in favor (Stephens, Bickford, Zewski, St. Peter) and one (1) opposed (Nolin).

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

V. Correspondence

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the September 21st, 2016 granting of a Special Exception for Lynn M. Photiades Revocable Trust, for a parcel located on 46 Driftwood Drive (Tax Map 166 Lot 28).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on September 21st. There were no changes made to the draft.

Motion: Mr. Bickford moved to approve the formal Notice of Decision as written for Lynn M. Photiades Revocable Trust, Tax Map 166, Lot 28 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, four (4) in favor (Stephens, Bickford, Zewski, St. Peter), and one (1) abstention (Nolin).

2. Review of 2017 Meeting Date Schedule - The Board was provided with a draft of the 2017 meeting dates. Mr. Stephens stated that the dates were the usual first and third Wednesdays of each month.

Motion: Mr. Stephens moved to approve the Zoning Board 2017 meeting dates as presented, seconded by Mr. Bickford, carried unanimously.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:58 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant