

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

Public Meeting

March 15, 2023

Minutes

Present: Members: Bob Stephens, Robert St. Peter, Nick DeMeo, Sean Poloian, Michael Mills
 Alternate: David McDonough
Excused: Alternates: Jerry Hopkins, Steve Buy
Staff Present: Bonnie L. Whitney, Administrative Assistant

I. Call to Order: Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. The Board Members and Staff then introduced themselves.

II. Pledge of Allegiance

III. Review/Approval of Minutes: 02/15/23

Motion: Mr. St. Peter made the motion to approve the February 15, 2023, minutes as written. Mr. DeMeo Seconded. The Motion carried with Mr. Mills abstaining.

IV. Hearings:

1. Continuation of Public Hearing for Madeline S. Oka and Paul Oka (168-2)
 (63 Blackey Cove Road) - Variance from Sections 3.2.2.1 and 3.2.2.3

Chairman Stephens stated that this was a continued hearing for Madeline and Paul Oka.

Mr. Stephens asked that the Board first determine whether this development has the potential of Regional Impact and take a vote on that determination. Mr. Stephens polled the Board by roll call vote asking each if they felt that this project for the Oka's (168-2) would have any potential for Regional Impact? Roll call: Mike – No; Nick – No; Sean – No; Rob – No; Bob – No.

Attorney Christopher Boldt of Donahue, Tucker & Ciandella, PLLC (DTC), Agent for the Applicants, was present representing the applicants, who were present in the audience.

Mr. Boldt gave a brief overview of the property which has frontage on Gregson Lane, and Blackey Cove Road bisects the rear quarter of the Lot that services two additional lots and becomes more narrow to the north. There is an existing garage which has a dwelling unit. The Oka's purchased the property which also has a four bedroom dwelling. There are one too many bedrooms on the site. As part of their plan, they are removing the dwelling unit from the garage/cottage, making it just a "Rec Room".

Mr. Boldt stated that the existing wall which is 22.7 feet from the south side line at its closest point and 38 feet from the centerline of the road will remain fixed. The new garage structure will not be getting closer. What is getting closer is the proposed boat shed (Exhibit F). The side setback will be 15.5 feet from the property line and 23.5 feet from the centerline of Blackey Cove Road. Mr. Boldt stated that the Lot is not subject to a wetland setback for the proposed use.

The proposal is to reconstruct the existing garage, bumping out the overhang to make it more aesthetically pleasing on the driveway side, increasing the proposed permeable driveway. As a result, there is no increase in the lot coverage calculation for the project.

Mr. Boldt noted the Existing Conditions Plan (Exhibit A), elevation plan (Exhibit G) , and Proposed Conditions Plan were available for participants to view. He referred to his narrative which addresses each of the five criteria. He then answered any questions from the Board.

Mr. Stephens noted the small wetland area between Blackey Cove Road and the existing garage, asking if there was a culvert that connected that wetland area with the wetlands across the street? Mr. Boldt stated that he did not know. Mr. Oka replied that there is no culvert on the other side of the street and that there is a small wetland area. There is a culvert down the road.

Mr. St. Peter questioned if the corner of the proposed addition intrudes the wetland, or only goes up to it? Mr. Boldt replied that the overhang goes right to it, but the foundation does not go into it.

Ms. Whitney noted that it was common for the surveyor (Ames Associates) to depict a temporary five foot work area around proposed additions that are very close to a wetland. This plan does not show such an impact area. She questioned how a contractor would be able to construct the garage without working in the wetland. Mr. Boldt indicated that he did not know. The foundation is not touching it, and it may be that they need to construct this one from the inside to the line and not go on that side of it. Mr. Boldt noted that that could be a condition of approval. Mr. Stephens noted his concerns with being able to complete the addition without encroaching into the wetlands. He noted that in some instances the NH Department of Environmental Services (DES) may grant a temporary impact permit which would allow for encroachment into the wetlands of a controlled agreement under specific conditions. Mr. Boldt agreed that there is the ability to have temporary impact. He had not explored this issue on this project. Mr. Boldt noted the project has received a Shoreland Permit for the project as proposed. The permit will need to be amended to reflect the change to the plan as submitted. Members noted that this could be a condition of approval that the applicant provide either a plan showing the area of encroachment that has been approved by DES with a permit for temporary impact to the wetlands, or written statement from DES that they do not have a problem with the fact that the wetland may be impacted.

Mr. DeMeo questioned the relationship between the property and Blackey Cove Road, asking if there was a deeded access or right-of-way? Mr. Boldt stated he believes that it is in the deed, and that it is subject to.

Mr. McDonough questioned if the garage was to be rehabbed or torn down and rebuilt. Mr. Boldt noted that the existing garage will be torn down.

Mr. Mills noted they have adjusted the front of the garage so that it would be at a more uniform width, at 27.25 feet, which is not uniform. He questioned how they arrived at the 34.25 foot length? Mr. Boldt stated that is the length of the boat.

Mr. Poloian questioned if they could move the proposed boat storage garage forward to be flush with the rear of the garage, therefore complying with the side setback and further from the wetlands? Mr. Boldt noted he was not certain with the tightness of the lot and the location of the driveway. That may cause an issue with the ability to back a boat in the shed if it were moved forward. Mr. Boldt noted that that would also raise the issue of what is the Board allowed to look at, and what they are not supposed to weigh against the applicant. He noted the Supreme Court decision which established separate tests for determining hardship for use verses area variance. This is an area variance. The legislature got rid of the Boccia standard effective January 1, 2010. The new version of NH RSA 674:33 eliminated necessity; it is no longer used in the standards. What now applies to both area and use variances is the board looks at special conditions of the property that distinguish it from other properties in the neighborhood and apply the rational, what was the purpose of the zoning ordinance provision the applicant is seeking a variance

from and is there a substantial connection that says you need to enforce that one here to say that there is not unnecessary hardship. The last test is the project reasonable. Mr. Boldt noted that his narrative submitted with the application lists what the special conditions of this property are and that the project is reasonable. Mr. Boldt referred to the plans submitted with the application which supports his request.

Mr. Stephens opened the public hearing for public input, noting there was none.

Mr. Stephens asked if there were any additional questions from the board. Hearing none, the board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:38 PM and came out of deliberative session at 8:00 PM.

During deliberative session members discussed separately the criteria for each section the applicant was seeking relief, giving their reasoning for each Section 3.2.2.1 for the road setback and Section 3.2.2.3 for the side setback. The members agreed that granting the variance would not be contrary to the public interest as the project would not “alter the essential character of the neighborhood: or “threaten the public health, safety or welfare” because the Addition would be in keeping with the size of the Property and the existing development in the immediate area along this portion of the Lake, the Project as a whole has already received the necessary DES Shoreland Permit, and the Project as a whole will comply with the Town’s Comprehensive Shoreland Protection provisions of Article 4.7, reflection that the proposal does not threaten public health, safety or welfare. For the same reasons as referenced for the first criterion the variance observes the spirit of the Ordinance. Substantial justice is done as there would be a clear loss to the Applicant that is not outweighed by any gain to the community by denying the request to construct the Addition. The proposed Addition will not diminish surrounding property values as it will not change the character of the neighborhood, it will be new construction adding value to the Applicant’s Property and the value of the surrounding properties in keeping with the lake-side residential character of the neighborhood. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the Property distinguishes it from other properties in the area due to the size and rectangular shape and location of the Property with the bisection of the Road near the inland side of the Property, without which the Road Setback Back Variance would not be needed. The Property has the existing Garage near the wetlands associated with the Road on both the Property and the Abutting Lot withing the Road Setback and the Project has obtained the Shoreland Permit for DES for the Addition. The proposed use is reasonable.

There was no further input from the Board or public. The voting members were Mike, Nick, Sean, Rob, and Bob.

MOTION: Mr. St. Peter made the motion to grant the request for a variance from Article 3.2.2.1 for Madeline S. Oka and Paul Oka, Tax Map 168, Lot 2 for the construction for an Addition (Boat Shed) to be located no closer than 23.5 feet from the centerline of Blackey Cove Road at its closest point where 50 ft. is required, subject to the following conditions: 1) Limits of encroachment into the road and lot line setbacks shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction; 2) SEE AMENDMENT BELOW The existing structure shall be located in relationship to the road and lot line setbacks and by a NH licensed surveyor prior to demolition and be submitted with the application for a demolition permit; 3) Project shall obtain necessary state and local permits, to include approval of a town building permit, and all conditions of such permits shall be perpetually complied with 4) Any future changes to the structure or its use shall be subject to required approvals; 5) An approved building permit must be obtained prior to commencing construction and all necessary inspections shall be successfully completed prior to use; 6) All representations made by the applicant and applicant’s agent shall be incorporated as a condition of approval. 7) The applicant and owner are solely responsible to comply with the conditions of approval. 8) Per RSA 674:33, approval expires on 3/15/2025 if use is not substantially acted on; 9) The applicant shall obtain necessary DES approval for temporary impact to the wetlands, 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 their next meeting. Mr. Poloian Seconded.

Discussion on Motion: Mr. Stephens noted his concerns with condition #1, in that he felt the language should be expanded on to clarify that the location of the existing building shall be located prior to the removal of the structure. Additional language was suggested to address locating the existing garage prior to demolition “The existing structure shall be located in relationship to the road and lot line setbacks and by a NH licensed surveyor prior to demolition and be submitted with the application for a demolition permit. Mr. Poloian Seconded the Motion as amended. The Motion carried Unanimously.

MOTION: Mr. St. Peter made the motion to grant the request for a variance from Article 3.2.2.3 for Madeline S. Oka and Paul Oka, Tax Map 168, Lot 2 for the construction for an Addition (Boat Shed) to be located no closer than 15.5 feet from the side boundary line at its closest point where 20 ft. is required, subject to the following conditions: 1) Limits of encroachment into the road and lot line setbacks shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction; 2) The existing structure shall be located in relationship to the road and lot line setbacks and by a NH licensed surveyor prior to demolition and be submitted with the application for a demolition permit; 3) Project shall obtain necessary state and local permits, to include approval of a town building permit, and all conditions of such permits shall be perpetually complied with 4) Any future changes to the structure or its use shall be subject to required approvals; 5) An approved building permit must be obtained prior to commencing construction and all necessary inspections shall be successfully completed prior to use; 6) All representations made by the applicant and applicant’s agent shall be incorporated as a condition of approval. 7) The applicant and owner are solely responsible to comply with the conditions of approval. 8) Per RSA 674:33, approval expires on 3/15/2025 if use is not substantially acted on; 9) The applicant shall obtain necessary DES approval for temporary impact to the wetlands, 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 their next meeting. Mr. DeMeo Seconded. The Motion carried 4 in favor and 1 opposed (Mills).

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

V. Correspondence: - None

VI. Unfinished Business:

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the February 15, 2023, granting of a Variance for William P. Davies, Jr. and Patricia A. Davies for a parcel located at 144 Curtis Lane (Tax Map 161, Lot 19).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on February 15, 2023. There were no changes made to the document.

MOTION: Mr. Poloian made the motion to approve the formal Notice of Decision as written for William P. Davies, Jr. and Patricia A. Davies for a parcel located at 144 Curtis Lane on Tax Map 161 Lot 19, and staff to mail said notice to the applicant or applicant’s agent. Mr. St. Peter seconded. The Motion carried with Mr. Mills abstaining.

VII. Adjournment: Mr. St. Peter made the motion to adjourn. Mr. DeMeo Seconded. The Motion carried Unanimously, and the Board adjourned at 8:08 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant