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

Minutes  

Present: Members: Bob Stephens, Ken Bickford, Robert St. Peter, Nick DeMeo  
Excused: Member: Richard Jenny  
Alternates: Steve Buy, Jerry Hopkins  
Staff Present: Interim Town Planner, Bruce Woodruff; Administrative Assistant, Bonnie L. 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 and Staff to the public.  
Chairman Stephens noted that there were only four members present this evening and that applicants are entitled to a full board of five members. If an applicant is willing to proceed with a board of four, they then forfeit their right to request a rehearing on a basis of a board of four. Mr. Stephens noted that an applicant may request a continuance to the next available date.

II. Pledge of Allegiance  

III. Approval of Minutes  
Motion: Mr. Bickford moved to approve the Zoning Board of Adjustment Minutes of December 18, 2019 as written, seconded by Mr. St. Peter. 3 – Ayes (Stephens, Bickford, St. Peter) 1 - Abstention (DeMeo). The motion carried.

IV. Hearings  
1. Peter Eckhoff, Trustee of the Peter B. Eckhoff Revocable Trust (223-42) (16 Hermit Cove Road)  
The Applicant is requesting to modify an existing height variance granted with conditions on June 7, 2018 by removing a condition to install fire sprinklers in the tower portion of a home under construction.  
Chairman Stephens stated this was a request to relief from an obligation to install fire sprinklers in the tower portion of a home under construction to comply with the Board’s Notice of Decision date June 7, 2018.  
Mr. Peter Eckhoff was present this evening and stated that he would proceed with a board of four. Mr. Eckhoff noted Planner Woodruff, Chief Bengtson and many members have been out to visit the site, thanking them for taking the time to view the structure. Also present was his builder, Mike Hayward.  
Mr. Eckhoff stated they were before the board in June of 2018 to request a height variance. At that hearing there were concerns with the portion of the building (a tower) which was above the 32 foot height restriction. The concern was about fire safety in that tower portion of the structure. A variance was conditionally approved for 39.5 feet. As part of the approval one of the conditions was that they needed to install a fire sprinkler in the top level in the tower.  
Mr. Eckhoff stated they have proceeded with construction, and as they moved forward, they started to seek individuals to install that sprinkler system and found they were no able to find people who were willing to do that. The reason being two-fold, one that they were worried about the actual effectiveness of
a sprinkler system for personal safety and secondly, they were worried about liability issues for themselves as a company.

They are now in a position where their intent is to comply with the condition as required, but finding they are not able to do so. Mr. Eckhoff stated that he believes that they do have safeguards that would allow them to not install the sprinklers and still be safe to exit the building in the event there was a fire.

Mr. Eckhoff went on to note that they will have smoke detectors throughout the building that will be centrally monitored. The smoke detectors will go off well before a sprinkler system would. The tower is a lightly used area, 127 square feet, on the third floor. They believe there would be a sufficient amount of time to exit down a traditional set of stairs. If that were not the case, there are egress window which go out to the roof, allowing them to descend to a porch level which is about 12 feet above finish grade. The floor of that portion is about 23 feet, well below the height restriction. The egress windows are 53” high and 30” wide, with the still at 44” from the floor. From the sill it is about 4 feet to the roof. It is steep, a 10/12 pitch, which goes to a porch roof that has a 6/12 pitch.

In addition, they plan to purchase an X-it fire Escape Ladder which will allow them to attach it to a tower window to exit and descend to the roof similar to described.

In closing, Mr. Eckhoff stated that they believe the design of the upper floor of the tower provides solid egress options in the event a necessary evacuation. As they have not been able to find a company willing to install the sprinklers, they are requesting the Board remove the condition to install a sprinkler system on the upper floor of the tower in the structure.

Chairman Stephens commented that the Board was discussing relief from an agreed upon installation of a sprinkler system in the tower. They are not dealing with the height variance, only that one item.

Planner Woodruff referred to his memo, noting the Chair had asked that either Chief Bengtson provide some kind of correspondence for the members or attend the meeting. Unfortunately, he did not receive a response from the Chief. Planner Woodruff commented that he met onsite with Chief Bengtson, the Applicant and his builder. At that time, they were unable to go up to the tower. He and the Chief looked at all what has been stated this evening. Mr. Woodruff noted what he recalled from what the Chief said was that he would not be in favor of a portable method of escape, like the portable ladder for a couple of reasons. One it can be put in a closet and forgotten, the next owner may not know where it is, or it may get lost. Secondly the Fire Chief felt that the first roof is too steep for safety. His recommendation was for some kind of small platform and a permanent ladder structure attached to the section of the steep roof.

Chairman Stephens commented that under the current ordinance there is a mean average for the high, explaining that, adding there is no requirement for an escape ladder. It is his understanding there is no way for the Town to get a ladder up there, as they only carry 24-25 foot ladders. Mr. Stephens noted there is a proposed zoning amendment which will require the windowsill within 20 feet measured vertically, out 10 feet. The reason for this limitation is for the safety issue from the Fire Department. He noted that the existing requirement doesn’t deal with that. The proposed amendment does, but in an illustration similar to this, if the peak were at 32 feet (proposed amendment 34 feet), does this particular design meet that requirement? As the only means of egress is out onto a roof, and you cannot meet that horizontal and vertical distance. Is a roof a reasonable consideration for getting out of the smoke or whatever hazard there is?

Members weighed in on there thoughts regarding safety in general. Mr. St. Peter noted there is one egress from the second floor in this home. The only other egress is from windows. Those windows meet code requirements for an egress window, but you would be jumping out the window if you need to exit before the Fire Department go there. These windows are 20 feet in height. He believes the tower has a safer means of egress, even if steep, as it gets you to a lower height of 12 feet, as opposed to jumping 20 feet.
Mr. Bickford questioned if the board were to approve this request and heaven forbid something should happen, does the Town assume any liability? Chairman Stephens replied that he doesn’t believe that it does. Planner Woodruff concurred with that as well.

Mr. Eckhoff clarified if you needed to go out the tower window, the peak of the roof to the left is approximately 3 ½ to 4 feet to the left. Over the peak there is a 3 pitch roof, down to another 3 pitch porch roof that is about 10 feet of the ground. The window opens in such a fashion that once you get onto the roof you would have to go around the window go downhill. Therefore, the window would preclude you from sliding down.

Mr. DeMeo referred to the comments of the Fire Chief, that he was concerned about getting out of the window and suggested that there be some platform which you could stand on. He was assuming the Chief was afraid you’ll slide down the roof. The Chair noted testimony was given that the window will preclude you from sliding down the roof. Mr. DeMeo questioned if the Chief will accept a simple solution. The Chairman stated that this was not in his jurisdiction to accept or reject a solution. Mr. Woodruff concurred with that as well.

A short discussion ensued relating to the X-it fire Escape Ladder Mr. Eckhoff plans to purchase.

The Chairman questioned if there was any input from the public. It was noted there was none.

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

**Motion:** Mr. St. Peter moved that the Board amended their prior Notice of Decision, dated June 7, 2018, for Peter Eckhoff, Trustee of the Peter B. Eckhoff Revocable Trust, 16 Hermit Cove Road, Tax Map 223, Lot 42, to remove the condition requiring the installation of a sprinkler in the tower based upon new information provided at the hearing this evening. Seconded by Mr. DeMeo, motion passed, four (4) in favor (Stephens, Bickford, St. Peter, DeMeo) and none (0) opposed.

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


   Variance from Article III. B (3) & Article VII. E (3)

   Chairman Stephens stated that this is an application for a variance from Article III. B (3) & Article VII. E (3) to allow for the relocation of an existing non-conforming cottage to be located 0.5-foot from the property line, where a 20 ft. setback is required.

   Mr. and Mrs. Christopher were present this evening. Mr. Christopher stated that he would proceed with a board of four. Mr. Christopher gave a brief history of the property. He stated that he owns the subject property 101 Burton Road and 103 Burton Road.

   Mr. Christopher noted that on 101 Burton Road (TM 136-19) one of the existing cottages is in violation of the lot line with the abutting property at 99 Burton Road (TM 136-18). Mr. Christopher referred to a Boundary Retracement Survey Plan which showed the existing and proposed conditions of the property. Mr. Christopher stated one of the existing cottages encroaches onto the abutting property by 16.9’ and a corner 2.3’ into the lake setback. The proposal is to relocate the cottage over the line, onto their property (Lot 19) 0.5’ from the lot line. They are unable to meet the required setback due to an existing second cottage on the site, and other improvements which have been there for sixty years.

   Mr. Christopher reviewed each of the criteria for the granting of a variance as submitted with the application. Mr. Christopher answered any questions from the board.

   Planner Woodruff commented should the board grant the variance he recommends that a foundation certificate be submitted to the Land Use Dept. certifying that the building corner will be exactly in the
proposed location. Mr. Woodruff noted a letter from the immediate abutter. The Chair commented there was a concern about the placement of a potential fence and the fact that it does need to be erected a sufficient distance from that line to allow for maintenance and replacement of the fence while standing on the owner’s own property. Another concern of the abutter is that the building be located exactly where the variance requires. Mr. Woodruff believes that the condition of obtaining as-as-built survey of the relocation of the cottage would alleviate that concern.

Mr. Bickford questioned if the cottages were three-season and what they were resetting the cottage on. Mr. Christopher replied the cottages are only used in the summer, and the cottage will be placed on the existing pilings.

The Chairman questioned if there was any input from the public. It was noted there was none. The Chairman asked if there were any additional questions from the Board. It was noted that there were none. The Chair closed the hearing for public input and the Board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:41 PM and came out at 7:45 PM.

During deliberative session, the Members discussed each of the criteria for the granting of a variance. They agreed that granting the variance would not be contrary to the public interest as the proposed relocation of the cottage will eliminate the encroachment onto the abutting property and would not have a negative impact on the neighborhood. For the same reasons as referenced for the first criteria 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 if the variance was denied. The variance will allow the Applicant to retain the existing cottage entirely on his property. The proposed use will not diminish surrounding property values as it will relocate the cottage off the abutting property and further from the abutter’s cottage. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the Property include that the existing encroaching cottage will be moved further from, not closer to, the abutter’s cottage and the proposed use is reasonable as the cottage exists today.

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

**Motion:** Mr. DeMeo moved to grant the request for a variance from Article III.B (3) & Article VII.E (3) for Bernard Christopher Jr. Rev. Trust of 2001, Tax Map 136 Lot 19, conditional upon the applicant providing an as-built foundation certification per the submitted plan titled Boundary Retracement Survey Plan Showing Proposed Conditions for Bernard Christopher Jr. Revocable Trust Tax Map 136 Lot 19 Plan Date 11/20/19, 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, four (4) in favor (Stephens, Bickford, St. Peter, DeMeo) and none (0) opposed.

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

3. Perry-Boyer 2019 Revocable Trust (166-20) (100 Driftwood Drive)
   
   Variance from Article III. B (3) & Article VII. E (1)

   Chairman Stephens stated that this is an application for a variance from Article III. B (3) & Article VII. E (1) to allow for a 26’ x 26’ addition to an existing non-conforming garage and that the proposed addition will be located no closer than the existing garage’s location at the closest point from the property line.

   Carl Perry and William Doucette were present for the hearing. As agent, Mr. Doucette presented the application for variance. He briefly described the proposal which is to expand the existing garage with
a 26’ x 26’ addition. The existing garage has a corner which intrudes into the side setback. Mr. Doucette stated he has found the pins, and based off that, the corner is approximately 15’10” off the property line. The closest corner of the proposed addition will be approximately 16’6” of the property line. He noted this would be only a pie shaped piece, corner, which intrudes into the setback area. Mr. Doucette stated the area of intrusion is due to the shape of the lot and the existing improvements on the site which include the driveway and the septic system. Mr. Doucette answered any questions from the board.

It was noted that Planner Woodruff had provided a map of the parcel along with his comments. Members questioned if there was another location somewhere in the building envelope where the addition could be constructed. Mr. Doucette noted the location of the existing garage, driveway and septic prevent any other location.

Mr. Perry has received the necessary NH DES Shoreland Permit by Notification (PBN) and provided a copy of the signed PBN for the record.

Mary Lahut, abutter at 122 Driftwood, stated that she had no objections with the proposal.

The Chairman asked if there were any additional questions from the Board. It was noted that there were none. The Chair closed the hearing for public input and the Board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:57 PM and came out at 8:03 PM.

During deliberative session, the members discussed each of the criteria for the granting of a variance. They agreed that granting the variance would not be contrary to the public interest as the proposed addition will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public because the request would not result in a lessening of the buffers, light or air between abutters. For the same reasons as referenced for the first criteria 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 if the variance was denied. The variance will allow the Applicant to construct a 26’ x 26’ addition to an existing garage. The proposed use will not diminish surrounding property values as it would help to improve the value of the property. Literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as there are special conditions of the property that distinguish it from other properties, such as the size and shape of the lot, the location of the driveway, and the location of the existing septic system which create an unnecessary hardship.

Once out of deliberative session, Mr. Perry questioned the placement of the addition in line with the existing garage. As stated earlier, Mr. Perry has already received his NH DES Shoreland Permit by Notification. As part of the application they had submitted a sketch which depicts the front wall of the addition lined up on the same plane as the front of the existing garage. This differs than the sketch submitted for with the variance application which has the rear wall of the addition lined up on the same plane as the rear wall of the existing garage.

Mr. Perry provided members with a copy of the sketch that was submitted and approved by DES. Members discussed this, noting the proposed addition is 2 feet wider than the existing garage, therefore if the addition is on the same plane as the front, then the addition would encroach approximately 1’ 6” further into the setback, instead of the 8” less as presented with the variance application. Mr. Perry wanted to make certain that there was not a discrepancy between the two sketches. Mr. Perry amended his variance application to include the sketch as approved by DES. Chairman Stephens asked the members if there was a need to review each of the criteria based on the amended location of the proposed addition. Members did not feel it was necessary to review each of the criteria and agreed that locating the addition along the front plane of the existing garage would not change the outcome of their discussion in deliberative session.

Prior to voting, Ms. Whitney questioned if Chairman Stephens had asked the owner and/or agent if they were okay with proceeding with a board of four members. For the record, the Chair asked if they were willing to proceed. Mr. Doucette stated yes, they were okay with a board of four members.

There was no further input from the Board or public. The voting members were Bob S., Ken, Rob and Nick.
Motion: Mr. St. Peter moved to grant the request for a variance from Article III.B (3) & Article VII.E (1) for the Perry – Boyer 2019. Rev. Trust, Tax Map 166 Lot 20, conditional upon the location of the new structures (addition) front wall being on the same plane as the existing garage measured to a distance of 26’ then at a right angle for 26’, back into the side setback to the point of encroachment, 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. DeMeo, motion passed, four (4) in favor (Stephens, Bickford, St. Peter, DeMeo) and none (0) opposed.

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 December 18, 2019 granting of a Special Exception for Clubhouse Motorsports, LLC for a parcel located on Tax Map 23, Lot 38, 1172 Whittier Highway.

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on December 18, 2019. There were no changes made to the document.

Motion: Mr. St. Peter moved to approve the formal Notice of Decision as written for Clubhouse Motorsports, LLC, Tax Map 23 Lot 38 and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant’s agent, seconded by Mr. Bickford. 3 – Ayes, 1 - Abstention (DeMeo). The motion carried.

2. The Board acknowledged Chairman Stephens letter of December 19, 2019 regarding the continuance of the hearing for Peak Index, LLC, Tax Map 183, Lot 1, 1277 Gov. Wentworth Highway to February 5, 2020.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:16 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,

Bonnie L. Whitney
Administrative Assistant