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

Regular Meeting  
March 4, 2020

Minutes

Present: Members: Bob Stephens, Ken Bickford, Robert St. Peter, Nick DeMeo, Richard Jenny
Alternate: Steve Buy
Excused: Alternate: 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 7:02 PM and led the Pledge of Allegiance. He then introduced the members of the Board and Staff to the public.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. DeMeo moved to approve the Zoning Board of Adjustment Minutes of January 15, 2020 as written, seconded by Mr. Bickford. 4 – Ayes (Stephens, Bickford, St. Peter, DeMeo), 0 – Nays, 1 -Abstention (Jenny). The motion carried.

Motion: Mr. Stephens moved to approve the Zoning Board of Adjustment Minutes of February 5, 2020 as written, seconded by Mr. St. Peter. 3 – Ayes (Stephens, St. Peter, Jenny), 0 – Nays, 2 -Abstentions (Bickford, DeMeo). The motion carried.

IV. Hearings

1. Continuation of Public Hearing — Peak Index, LLC (183-1) (1277 Gov. Wentworth Highway)
   Special Exception – VI.C (Table of permitted uses) & MZO Article VI.E

   Chairman Stephens stated this was a continuation of a Public Hearing for Peak Index, LLC. Prior to opening the hearing, he stated that Planner Woodruff had brought to the Board’s attention something which is important for the Board to consider.

   Planner Woodruff referred to NH RSA 36:56 Review Required. He went onto read the following: I. A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.

   Planner Woodruff noted that The Zoning Board of Adjustment Handbook says this subdivision of the statutes is traditionally thought of as applying to planning boards only, when in fact it applies to any proposal for development before a local land use board. By definition the Zoning board is a local land use board. He added that there is a definition of what a “development of regional impact” means, which is any proposal before a local land use board, which in their determination, could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following: II. Proximity to the borders of a neighboring community. IV. Anticipated emissions such as light, noise, smoke, odors, or particles.
The Planner stated that the Board should take the discussion up regarding regional impact prior to moving forward.

Chairman Stephens identified that the statute requires the board to evaluate whether or not this development will have a regional impact based on either proximity or issues at hand. It sounds to him, that noise is one of the factors. If that is the case, the board would notify the affected municipality (Tuftonboro) who is in close proximity to the development before the board. This notice would be sent to the Town of Tuftonboro who would make a determination as the whether they felt they wanted to have input into this hearing.

Members had a brief discussion regarding this requirement. Members questioned how close Tuftonboro was to the proposed development. The Chair replied the town line was about a ¼ mile away. If that. They questioned if the town was required to notify them if there was a potential impact. By statute, notification is required if the board determined that they feel the application before them potentially has an impact on the town. One member commented that it was his understanding that if the board did not do this, and any affected municipality was not aware of the hearing and any decision made, the board could be required to complete the process all over again.

It was the consensus of the board that this development could have the potential for regional impact.

Motion: Mr. DeMeo moved that the application submitted for Peak Index, LLC (183-1) has the potential for regional impact and that the requirements of NH RSA 36:54-57 Review of Developments of Regional Impact are to be followed. Seconded by Mr. St. Peter, carried unanimously.

Based on the above motion, and the procedure requirements, the board discussed possible meeting dates for the continuance of the hearing.

Motion: Mr. Stephens moved to continue the hearing for Peak Index, LLC (183-1) (1277 Governor Wentworth Highway) to April 15, 2020, seconded by Mr. Bickford, carried unanimously.

Chairman Stephens suggested taking the remaining two hearings out of order, first taking up the application for Moultonborough Realty Trust, then Leonard and Janis Banos Moultonboro Trusts. Members had no objection with changing the order of hearings number 2 and 3.

3. Moultonborough Realty Trust; John J. O’Brien Trustee (147-31) (166 Wentworth Shores Road) Variance from Article III.A, Table I, and IV.C (2) and III. B (4)

Claire Wilkens of Misiaszek Turpin, PLLC was present representing Scot O’Brien and Moultonborough Realty Trust. Mr. Scot O’Brien was present for the hearing. Ms. Wilkens gave a brief history of the property, noting there are multiple dwellings on the lot. The proposal is to remove and replace one of the dwellings with a 30’ x 40’ structure. The need for the variance is that the dwelling does not meet required setback from the lake, nor does the lot meet current lot sizing or frontage for two dwellings on the lot. It was noted that both dwellings predate the 1985 adoption of zoning.

Chairman Stephens questioned which members had been out to view the property. All but Mr. St. Peter had been to view the site.

There was a brief discussion as to which structure was to be removed and replaced. It was stated that when facing the lake from the road, the dwelling to the right is to be removed. It is the cottage that has the roof falling in. The house to the left with the gray vinyl siding is not being removed.
Ms. Wilkens stated the non-conforming square footage will be reduced by 120 sq. ft. with the proposed home being pushed back landward and will be less non-conforming with the reduction in the square footage and moving it back from the lake. She stated the living space of the existing structure is located 36’ 3” from the reference line, and the closest point of the proposed structure will 42’ 2”, so it will be moving back 6’ away from the lake.

Members reviewed the existing and proposed plan that was submitted with the application. Included was a sketch dated 18 February 2020 prepared by Misiaszek Turpin, PLLC. Mr. St. Peter noted the house is moving back, but there is a large porch which is encroaching further into the lake setback. Ms. Wilkens stated correct, and that has been figured into the shoreland application. They provided a copy of the NHDES Shoreland Permit (2015-03327) with the materials. She added that by state statute they’re allowed to construct a porch 12’ closer to the lake. It was noted that the board is not governed by the DES. The town is more restrictive than DES and that porch/deck is counted as part of the non-conformity and intrusion into the required setback.

The Chair questioned if the plan submitted, dated December 7, 2015, was the plan submitted to DES with their shoreland permit application? Ms. Wilkens stated correct.

Chairman Stephens stated the boathouse appears to be dug in. The boathouse is on piers and it appears water protrudes in beyond the base of the boathouse. Ms. Wilkens stated it does. The Chair stated the plan does not factor that into the shoreline. Ms. Wilkens commented that the boathouse isn’t part of this proposal. Chairman Stephens stated the shoreline needs to be depicted accurately as you are seeking relief from the highwater or reference line. The boathouse is dug in. That portion that is dug in is subject to highwater.

Planner Woodruff commented the reference line with the dug in boathouse follows where the water meets the land and that bump out is not shown on the plan. He stated the plan that was submitted and calculated for the shoreland permit which was approved in 2015 is not current and it’s not correct. Mr. Woodruff noted the discrepancies in the 2015 plan. The lot is bisected by Wentworth Shores Road, but, is still one lot of record and is within the 250 ft. shoreland protection zone. To the west of Wentworth Shores Road, it depicts a “200 sq. ft. Existing Cottage 1”. That cottage no longer exists. In its place, and approximate location is a 1,008 sq. ft. garage structure. Therefore, the Shoreland Impact Permit #2015-03327 is not correct. The permit put a cap on the impervious surface allowed by the permit at 25.59%.

Planner Woodruff recommended if the board were to move forward and grant the variance this evening, that it be conditioned on getting an amended shoreland permit that considers current conditions and corrects the deficiencies in the plan. Another deficiency being the fact that the 50 ft. shoreland primary setback is not correct as the bump out for the dug in boathouse is not shown. He recommended that the plan going to the state for the amended permit adhere to Moultonborough’s regulations of requiring 100-pts. of total trees and saplings to remain and not 50-pts. as the state’s requirement under RSA 483: B. And, the issue with the proximity of the proposed deck/porch be shown, with distances from the reference line. Since the conditions have changed, and the permit says no more than 25.59% of the area of the lot within the protected shoreland shall be covered by impervious surfaces unless additional approval is obtained from DES. He believes that percentage will be greater than what was approved by the state.

Mr. Jenny noted the structure to be removed is in a dilapidated condition and ready for demolition. This is not a case where someone is making a more modern home. This isn’t an upgrade of someone’s home. It was noted that the structure does exist. There are two existing dwellings on the lot.

Mr. DeMeo noted the existing structure is on piers, asking if the proposed structure will have a foundation? Ms. Wilkens stated there will be a crawl space to the depth that the water table will allow.
Mr. Bickford questioned if there were any provisions for stormwater management? Ms. Wilkens stated yes. There is mitigation for the roof drainage depicted on the plan.

Members discussed the fact that there were several discrepancies or deficiencies in the plan and agreed that an amended plan was necessary to proceed forward. The plan submitted to DES should comply with the Town’s regulations and be submitted to the Land Use Office and ZBA prior to a continued hearing. The revised plan should include the location and dimension of the new 1008 sq. ft. garage, an accurate depiction of the shoreline that includes the dug in boathouse, the corrected 50’ and 150’ setback line from that “new” shoreline, provide impervious lot coverage and an amended shoreline impact permit.

Motion: Mr. St. Peter moved to continue the hearing for Moultonborough Realty Trust; John J. O’Brien Trustee (147-31) (166 Wentworth Shores Road) to April 15, 2020, seconded by Mr. DeMeo, carried unanimously.

Mr. Stephens stepped down from the Board at this time, with Vice-Chairman Bickford conducting the hearing for Leonard & Janis Banos Moultonboro Trusts. Mr. Bickford appointed Steve Buy to sit on the Board with full voting privileges in place of member Bob Stephens.

2. Leonard & Janis Banos Moultonboro Trusts (255-21) (51 Oak Landing Road) Variance from Article III. B (3)

Bob Stephens from RH Stephens Building Contractor was present representing the Applicants Leonard & Janis Banos.

Mr. Stephens stated the request is for relief for intrusion into the side setback to construct a basement egress extending 10 ft. into the side setback. Mr. Stephens stated this was a small footprint of approximately 60 sq. ft. and stated there is no other location on the property to construct an egress stairway. The purpose behind this is for a second means of egress from a finished basement. Currently there is only one mode of egress and the homeowners are not comfortable with one exit.

Members questioned if this was a covered means of egress. Mr. Stephens stated yes. It will be a “dog-house”. He provided members with an elevation sketch of the proposed egress, noting there is a landing at the top with an inward swinging door. Mr. Stephens stated that the intrusion may be less than 10 ft., which is the worst case scenario.

Several of the members had been to the site and agreed that the proposed location was a natural place to construct it. The area is wooded and will not affect the neighbors.

Mr. Stephens noted that the proposed project will require a Shoreland Permit for Notification, which they have applied to NH DES and he provided a copy of the application for the record. Members questioned if there was any provision for stormwater management? Mr. Stephens noted the plan depicts infiltration trenches on each side of the proposed structure.

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

The Vice-Chair asked if there were any additional questions from the board. Noting none, the board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:55 PM and came out of deliberative session at 8:01 PM.

During deliberative session 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
structure will have a small footprint 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 by denying the request to provide an additional egress. The proposed use will not diminish surrounding property values as it will not cause any overcrowding or change in the 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 placement of the existing home on the lot and the intrusion is minimal (60 sq. ft.) and will not cause overcrowding. The proposed use is reasonable given the interior basement layout the proposed location is the only option to provide an additional means of egress.

Planner Woodruff commented if the board should choose to grant the variance, he would suggest that the motion include the words up to because the GIS accuracy is +/- 3-ft. He suggested motion be worded “to grant the side setback variance for Leonard & Janis Banos Moultonboro Trusts that allows construction of a basement egress structure extending up to 10-ft into the side setback, where a 20 ft. setback is required.

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

Motion: Mr. DeMeo moved to grant the request for a variance from Article III B. (3) for Leonard & Janis Banos, Tax Map 255 Lot 21, that allows construction of a basement egress structure extending up to 10-ft into the side setback, where a 20 ft. setback is required. subject to the following condition: 1) Receipt of the NH DES Shoreland Permit by Notification, 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, five (5) in favor (Bickford, St. Peter, DeMeo, Jenny, Buy) and none (0) opposed.

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

Mr. Stephens returned to the board at this time with full voting privileges.

V. Correspondence
VI. Unfinished Business
1. The Board acknowledged Chairman Stephens letter of January 17, 2020 for Peter Eckhoff, Trustee of the Peter B. Eckhoff Revocable Trust for a parcel located on Tax Map 223, Lot 42, 16 Hermit Cove for the removal of a condition to install fire sprinklers as stated in the June 7, 2018 Notice of Decision.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the January 15, 2020 granting of a Variance for Bernard Christopher Jr. Rev Trust of 2001 for a parcel located on Tax Map 136, Lot 19, 101 Burton Road.

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on January 15, 2020. There were no changes made to the document.

Motion: Mr. Bickford moved to approve the formal Notice of Decision as written for Bernard Christopher Jr. Rev Trust of 2001, Tax Map 136 Lot 19 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. 4 – Ayes, 1 - Abstention (Jenny). The motion carried.
3. Review and possible authorization for the Chair to sign the formal Notice of Decision for the January 15, 2020 granting of a Variance for Perry-Boyer 2019 Revocable Trust for a parcel located on Tax Map 166, Lot 20, 100 Driftwood Drive.

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on January 15, 2020. There were no changes made to the document.

**Motion:** Mr. Bickford moved to approve the formal Notice of Decision as written for Perry-Boyer 2019 Revocable Trust, Tax Map 166 Lot 20 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. 4 – Ayes, 1 -Abstention (Jenny). The motion carried.

**VII. Adjournment**

**Motion:** Mr. DeMeo made the motion to adjourn at 8:08 PM, seconded by Mr. Stephens, carried unanimously.

Respectfully Submitted,

Bonnie L. Whitney
Administrative Assistant

NOTICE: These DRAFT Minutes have not been formally approved by the Zoning Board of Adjustment. Please contact the Land Use Department after the next regularly scheduled meeting of the Moultonborough Zoning Board of Adjustment to be held on the 1st and 3rd Wednesday of each month, to learn if any corrections, additions or deletions were made.