

Motion: Mr. Stephens moved to appoint Jerry Hopkins for a one-year term, Bob Zewski for a two-year term and Paul Onthank for a three-year term, seconded by Mr. St. Peter, carried unanimously.

IV. Approval of Minutes

Motion: Mr. DeMeo moved to approve the Zoning Board of Adjustment Minutes of February 21, 2018, as written, seconded by Mr. St. Peter, carried unanimously with Mr. Stephens abstaining.

V. Hearings

1. Peter & Theresa Champagne (245-73) (10 Kingswood Lane)
Variance from Article III.B (3)

Chairman Stephens stated that this was an application for a variance from Article III.B (3).

Peter Champagne presented the variance application. Mr. Champagne noted he currently lives in Moultonborough and his wife is to retire here soon. As they will be here full-time, year-round, they would like a garage. They stated that he was seeking a variance to allow for the construction of a 26' x 32' garage to be located 12' 6" at the closest point from the side setback, where a 20 ft. setback is required. Mr. Champagne answered any questions from the Board.

The Chair questioned if the proposed location would allow them to enter into a kitchen area. Mr. Champagne stated it will be a walk-in to the lower level. The Chair asked if there was a reason the garage could not be put behind the house? Mr. Champagne stated the septic system is located behind the house.

Mr. Jenny questioned if there is a survey of the property? Mr. Champagne stated he has four corner stakes which have been there from a neighbor who had a survey done. Mr. Jenny noted his concerns with the limited amount of data that was presented with the application. He added that the drawing is not to scale as the line depicting 12' is almost the same size as the line depicting 26'.

Mr. Hopkins questioned why wouldn't they put the garage under the porch or on the other side? Mr. Champagne stated there wasn't enough headroom.

The Chair questioned what was the closest point from the front corner of the house to the property line? Mr. Champagne stated 38 ½ feet as measured with a tape measurer.

Mr. DeMeo questioned if it was possible to build the garage one stall wide and two stalls deep? Mr. Champagne stated no, due to the septic to the rear.

The Chair opened the hearing for public input.

Jim Anderson, 9 Kingswood Lane spoke in favor of the variance, stating he feels that the garage will fit in with the neighborhood.

Chris Smith noted that the board had granted a variance for a neighbor to be 14' from the property line.

The Chairman asked if there were any additional 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 7:23 pm. The Board noted their concerns with the small lot sizes, the distance between the neighboring home and the size of the proposed garage. A question was raised if the applicant would be willing to reduce the width of the garage from 26' to 22 or 24'. The Board came out of deliberative session at 7:31 pm to discuss this with the applicant. Mr. Champagne agreed to reduce the width of the proposed garage to 24'. The Board returned to deliberative session at 7:33 pm and came out at 7:41 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 construction would be in keeping with other homes in 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 construct a garage to be located no closer than 14' 6" from a surveyed property line. The proposed use will not diminish surrounding property values as it would help to improve not only the value of the Property but also the value of the surrounding properties. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the Property include the small size of the lot, as well as the location of the existing dwelling.

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

Motion: Mr. St. Peter moved to grant the request for a variance from Article III.B (3) for Peter & Theresa Champagne, Tax Map 245 Lot 73 for the construction of a 24' x 32' garage with the condition that the construction of said garage shall be no closer than 14'6" from the surveyed property line and its location shall be confirmed by survey, 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, St. Peter, DeMeo, Jenny) and one (1) opposed (Bickford).

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

2. Stephen C. Bradley, Member/Manager of BP Corner, LLC (52-2) (5 Old Route 109)
Variance from Article 5, Paragraphs 502 (C) & 503 (D)

Chairman Stephens stated the application was for a variance from Article 5, Paragraphs 502 (C) & 503 (D).

Attorney Christopher Boldt of Donahue, Tucker & Ciandella was present representing Mr. Bradley and his company. Mr. Boldt referred to the Application packet submitted which contains his narrative, the Planning Boards approval of the site plan for the project, including the site plan, and a photograph of the existing sign and two versions of the proposed sign ("Exhibit C"). This application is relating to the sign on the corner of Route 25 and Old Route 109. Mr. Boldt stated they are talking about the corner sign to be used as advertising for the Owner's restaurant "The New Woodshed".

Mr. Boldt noted the Sign has been there for quite some time and is shown on Site Plan as being moved back approximately ten feet. As the Sign is existing, and because it is in essential common ownership, Mr. Boldt asked the Board to consider first if the variance necessary? It is a property owners Sign that exists, and it is advertising his business verses what the Ordinance seems to be talking about.

The Chair requested the Code Enforcement Officer, Don Cahoon, weigh in on this.

Mr. Cahoon stated once the building came down basically the Sign was gone and lost anything it had. Once the building is gone, the Sign is gone. It has been there only because Mark (the prior owner) was trying very hard to get the place opened back up. Under the Ordinance, he could keep it that way. Once the building was torn down, it is his opinion, the Sign was gone and there is no grandfathering to it. The Selectmen approve or disapprove off premise signs. In Mr. Cahoon's opinion, what they are here for is the size they want to have for an off-premise sign. They need the variance for the size and then the Selectmen have the authority to approve a sign on that property. The Planning Board approved a sign location as it must be shown on the site plan. It didn't approve the sign, only the location of a sign, should it be approved further down the road. Mr. Cahoon understands that Mr. Boldt's argument is that the business is part of the Woodshed or the Cup & Crumb property. It is a separate piece of property. There is no business on it. An off-premise sign means it is not on the premises of the business. He does not see how you can call this anything but an off-premise sign.

The Chair stated that the original sign there was advertising the business that was located on that property. It is the Town Attorney's opinion that when that business was torn down, that it lost its vested rights, in terms of size. The current thought is that off-premise signs are limited to 4 square feet. The Applicant is choosing to use the "Sign" in its present size, and council feels that would be a variance to increase the size of the sign. Otherwise it could be reduced to 4 sq. ft., leave it there, and he would be in compliance with the current zoning ordinance.

Mr. Cahoon added if a business changes, the Selectmen would approve a change to the sign. Any time there is a change to a sign, whether it be wording or whatever, there is a new application that comes in. It would have to go through the process at that point. If the name of the business sign changed, it would need to go back to the Selectmen again.

The Board briefly discussed off-premise signs and the reasoning behind them. Members noted the billboard that the New Woodshed currently advertises on. It was noted this is a billboard on a separate lot of record which the applicant has advertised on. The billboard is grandfathered and is not going away at this time.

The Chair stated that there were two issues at hand, do they really need a variance, or is this grandfathered in. If the Board determines the right to have the off-premise sign, is its size acceptable? It was the opinion of the Chair that they need to go the variance route for the increased size. Members agreed with this, noting to Article 5 Section 503 (D) "No sign may advertise a business off site with the exception of directional signs as per Article 5 Section 502 (C)". The directional sign can be no greater in size than four (4) square feet. That would include the name of the business and the direction. After further discussion the Chair made the following motion:

Motion: Mr. Stephens moved that the Board deny the Applicants request to waive the need for a variance, seconded by Mr. Bickford, carried unanimously.

Attorney Boldt then moved onto addressing the criteria for the granting of a variance for the Sign as illustrated in Exhibit C on the existing Sign structure in accordance with the approved Site Plan as detailed in his narrative.

The first criteria is the variance will not be contrary to the public interest. Mr. Boldt stated they are business friendly, trying to help give direction, trying to make sure there is not conflicting evidence and things of that nature. They believe it is not contrary to public interests since: the proposed sign is

completely within the existing structure, the location will be ten feet back further from the road, the Site Plan did include this, there will be no other businesses on the Property to be confused by the directional sign, there is essential common ownership between the properties, and they believe they conform with the purpose statements of Sections 501(A) & (B).

The Second criteria is The spirit of the Ordinance is observed. They feel this is a unique situation where there is the commonality of ownership which will not create a precedent that may be repeated in other locations.

Substantial Justice is done, as in this case, there is a clear loss to the Applicant that is not outweighed by any gain to the community if the variance is denied. Mr. Boldt stated that the variance will allow the Applicant to use the Sign to direct the public towards his commonly owned business and will provide direction to the public on a well-traveled corner near the center of Town. He argued that there is no benefit to decreasing the size of the Sign as the Sign will be moved ten feet back further from the road. He claims the use of the Sign is an essential vested property right that was maintained throughout the Planning Board approval process.

The Proposed use will not diminish surrounding property values as this is a commercial location in Town. They have a substantial redevelopment of the site in a positive way. Use of the Sign will help the New Woodshed Restaurant. That helps the taxable value of the New Woodshed Restaurant, it helps the meals and rooms tax benefit that flows to the State and the Town. There will not be a diminution in property values as a result of having that Sign improved to be a tasteful and useful asset.

Literal enforcement would result in an unnecessary hardship as there are “special conditions” of this Property that include: the status of the approved Site Plan; the location of the corner of 109 and 25 with other commercial and municipal uses adjacent; its as-built condition today, that Sign is there and has been for many years after the restaurant had ceased to operate and they have the unique situation of the commonality of ownership. Attorney Boldt believes the proposed Sign will provide easy and legible direction and information about the business owned by the Applicant; the use would orient and direct people at a crossroads near the center of Town; the use will be supportive of local businesses and community vitality; the size and design would facilitate efficient communication and easy recognition and legibility far more than a true four square foot sign would; it will enhance the Sign’s attractiveness, aesthetics, and design quality as shown on the attachment; and it will complement the park like setting that’s going to be created as part of the project.

Mr. Boldt asked that the ZBA find that there’s no fair and substantial relationship with them imposing the four-square foot requirement on that existing structure. Mr. Boldt answered any questions from the Board.

Mr. Hopkins clarified that the Applicant is asking for the sign structure as a whole. Not only the 2 ½ x 5-foot directional sign. Mr. Boldt stated they are asking to be able to reuse what’s there. Mr. Hopkins stated that would be off-site advertising, plus the directional sign. Mr. Boldt added, if the Board was saying the lower part needed to be smaller, they have given a second option shown as #3. They would prefer option #2 as shown on Exhibit C but could live with option #3.

Mr. DeMeo stated that Mr. Boldt felt the Sign was grandfathered, with the Board not agreeing. He asked if the Applicant was “married” to the shape as they think they own the Sign? Mr. Boldt replied he was confident that his Applicant thinks he owns the Sign. He is confident that he believes the Applicant has every right to continue that Sign, and it is definitely one of those things where part of his purpose in buying the property was to purchase that Sign. That has been the intent throughout.

Mr. DeMeo questioned if there were two signs there? A directional sign and an advertising sign? The Chair replied he felt it is one sign that contains the business advertisement and the direction.

Mr. Bickford asked wouldn't the size then be limited to 36 square feet? It was stated the 36 square feet is for on-site signage. Off-site, off-premise signage is limited to 4 square feet, therefore the request for the variance to allow the reuse of the existing Sign.

Members discussed the common ownership of the Property and the New Woodshed Property. Asking if a variance was granted, could they sell the New Woodshed property and keep the Sign on this property? The Board discussed this at length noting there is no building on the property. They could sell the property independent of selling the New Woodshed property. Mr. Boldt stated he doesn't think there is a way to put a building on the lot given the needs that are in the Site Plan that are associated with the adjacent site.

The Chair questioned if the square footage of an off-premise sign was revised during the last ordinance revision? After reviewing past ordinances, Mr. Cahoon stated that at the time of the adoption of the Zoning Ordinance in 1985, off-premise directional signs were allowed to be no greater than 16 square feet. In 2010 the Ordinance was amended limiting the size of directional signs to not greater than four (4) square feet.

The Chair stated that the Board was to evaluate the size of the sign which is limited to not greater than four (4) square feet for business identification and direction sign only, may be allowed by permit for each business off site at the discretion of the Board of Selectmen for traffic and safety reasons, and no sign may advertise a business off site with the exception of directional signs as per Article 5 Section 502(C).

The Chairman asked if there were any additional 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 8:29 pm and came out of deliberative session at 8:56 pm.

During deliberative session, the Members discussed each of the criteria for the granting of a variance as well as the size, layout and location of the Sign. Members agreed they were discussing Option #3 as shown on Exhibit C. The Board agreed that granting the variance would not be contrary to the public interest as the previous Sign existed and will be moved further away. It is basically the same sign that has been there for many years and will not alter the essential character of the neighborhood. For the same reasons as reference 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 proposed use will not diminish surrounding property values as it would help to improve not only the value of the Property but also the value of the surrounding properties. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as the Ordinance precludes the use of a directional sign because the limitation of 4 square feet is not reasonable. It is too small to read and becomes a safety hazard.

Attorney Boldt asked for clarification if the square footage were approved, was there still a need for the Applicant to go back to the Selectmen? The Chair stated they do. The ZBA was giving relieve on the size of the sign, then it becomes the jurisdiction for whatever they deem appropriate.

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

Motion: Mr. Bickford moved to grant the request for a variance for Stephen C. Bradley, Member/Manager of BP Corner, LLC, Tax Map 52 Lot 2 subject to the following conditions: 1) the proposed directional sign be located as per the location shown on the site plan previously approved by the Moultonborough Planning Board; and 2) that the sign approved is option #3 as illustrated on "Exhibit C" and shall be no greater than 37.62 sq. ft. (in which the sq. ft. of the "oval" was calculated to be approximate), 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, carried unanimously.

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

3. Jason Jackson (252-6) (5 Crosswinds Drive)
Variance from Article III.B (3)

Chairman Stephens stated that this was an application for a variance from Article III.B (3).

Jason Jackson presented his Application for variance. Mr. Jackson stated that he was seeking a variance to allow for the construction of a 24' x 36' garage where a small portion (1.8 sq. ft.) to be located approximately 18 feet at the closest point from the side setback, where a 20 ft. setback is required. Mr. Jackson briefly described the existing conditions and surrounding area of the dwelling. He noted the dimensions from the foundation encroaches approximately 6 inches, stating that there is an 18-inch eave overhang. The abutting lot in which the proposed garage would encroach on is property of the Crosswinds Association and the tennis court is located on the lot. Mr. Jackson stated that he has received the necessary approval from Crosswinds Association for the request for a set-back variance. He addressed each of the criteria for the granting of a variance and answered any questions from the Board.

The Chair pointed out that the clear majority of the requested area is within the dripline, rather than the actual structure. It was noted the Code Enforcement Officer allows for an 18-inch overhang. With that being allowed, the area of intrusion would only be approximately 4 inches.

Chairman Stephens noted that there were no members from the public present this evening, therefore no need to open the hearing for public input.

The Chair asked if there were any additional 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 9:14 pm and came out of deliberative session at 9:16 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 garage will be in an area that is mostly clear of vegetation and does not violate the objective of this provision, and the proposed construction would be in keeping with other homes in 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 proposed use will not diminish surrounding property values as it would help to improve not only the value of the Property but also the value of the surrounding properties. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the Property include the unique "L" shaped lot, severe slope of the lot, and placement of the existing dwelling on the lot".

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

Motion: Mr. DeMeo moved to grant the request for a variance from Article III.B (3) for Jason Jackson, Tax Map 252 Lot 6, 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, carried unanimously.

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

VII. Unfinished Business

1. Review and possible authorization for the Vice Chair to sign the formal Notice of Decision for the February 21st, 2018 granting of a variance for Steven & Michelle Hall, for a parcel located at the corner of Rose Land and Driftwood Drive (Tax Map 166 Lot 7).

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

Motion: Mr. Bickford moved to approve the formal Decision Letter as written for Steven and Michelle Hall, Tax Map 166 Lot 7 and to authorize the Vice-Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. St. Peter, motion passed, four (4) in favor (Bickford, St. Peter, DeMeo, Jenny), one (1) abstention (Stephens) and none (0) opposed.

VI. Correspondence

1. The Chair noted the board was in receipt of a letter from Steven Hall (TM 166-007) dated March 19, 2018. Mr. Hall has advised the Board that he is not proceeding with the project in which the board granted a variance on February 21, 2018, and that the decision of the Board can be vacated. The Board does not need to vacate the decision, as Mr. Hall has the right to develop the property in compliance with the provisions of the Zoning Ordinance. Or, he has the two years to execute the variance as granted.

Mr. Hall has stated that he plans on complying with the Zoning Ordinance and does not need the variance to move ahead with the construction of a garage with living space, as it will no longer be only an accessory building.

The Chair noted the Board has a few options. One thing that comes to mind, is if the Board does not vacate the decision and Mr. Hall decides to exercise the right under the variance, will the right of appeal expire? The Chair would like the Board to vote on Mr. Halls letter indicating that the Board has voted to vacate their decision of February 21, 2018. Then, if Mr. Hall wanted to construct only an accessory structure, he would need to come back before the Board for a new variance. This would preserve the rights of the abutters to appeal a decision.

It was noted that the Board was in receipt of two requests for rehearing. The majority of the members agreed that those requests become nonrelevant if they vacate the decision. Based on Mr. Halls letter the Chair made the following motion.

Motion: Mr. Stephens moved that the Board accept Mr. Halls statement in his letter dated March 19, 2018 regarding Tax Map 166 Lot 7 to vacate the decision of the Zoning Board of Adjustment that was made on February 21, 2018, seconded by Mr. Bickford, motion passed, four (4) in favor (Stephens, Bickford, DeMeo, Jenny) and one (1) opposed (St. Peter).

2. The Chair noted the board was in receipt of a request for rehearing filed by Mark & Katherine Clausen, received on March 7, 2018, regarding the variance granted by the Board on February 21, 2018 for Steven & Michelle Hall (TM 166, Lot 7). Based on the motion above regarding the Letter of Steven Hall, there was no action taken. The Board acknowledged receipt of the Clausen Letter.

3. The Chair noted the board was in receipt of correspondence from Richard Burbank, received on March 16, 2018. Mr. Burbank is filing an Appeal from an Administrative Decision regarding the variance granted to Steven and Michelle Hall, TM 166 Lot 7. Based on the motion above regarding the Letter of Steven Hall, there was no action taken. The Board acknowledged receipt of the Burbank Letter.

4. The Chair noted the upcoming annual NH OEP Spring Planning & Zoning Conference will be held this year on Saturday, April 28th at the Grappone Conference Center in Concord. Members were encouraged to attend the workshop, noting registration fees will be covered by the Town. [Click here](#) for more details or go to [nh.gov/osi](https://www.nh.gov/osi). (<https://www.nh.gov/osi/planning/resources/conferences/spring-2018/index.htm>)

5. Review of Policies and By-Laws

Board members were provided with a copy of the Policies which were approved in 2017. There was no discussion or changes made to the policies.

Motion: Mr. Stephens moved to approve the Policies and By-Laws as presented, seconded by Mr. DeMeo, carried unanimously.

VIII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:31 PM, seconded by Mr. Bickford, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant