

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

Regular Meeting

December 15, 2010

Minutes

Present: Members: Bob Stephens, Russell Nolin;
Alternates: Nicol Roseberry, Robert Zewski; Town Planner, Dan Merhalski
Excused: Members: Jerry Hopkins, Ray Heal, Kevin M^cCarthy

I. Call to Order

Mr. Stephens called the meeting to order at 7:30 PM and introduced the members of the board to the public. Mr. Stephens appointed Nicol Roseberry and Bob Zewski to sit on the board with full voting privileges in place of Ray Heal and Jerry Hopkins.

Mr. Stephens noted that there were only four members present this evening and that applicants are entitled to a full board of five members. If the applicants were willing to proceed with a board of four, then they forfeit their right to request a rehearing on a basis of a board of four. Mr. Stephens noted the applicant may request a continuance to the next available date.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Nolin moved to approve the Zoning Board of Adjustment Minutes of December 1, 2010, seconded by Mr. Zewski, carried unanimously.

IV. Hearings

1. Continuation of Public Hearing - Carlene Porter-Holmes & Myron Holmes (74-14) (143 Lees Mill Road) Variance – Article III (B)(1)

Mr. Stephens noted this was a continued hearing for a variance for Carlene Porter-Holmes & Myron Holmes and asked the applicant if they wished to proceed with a board of four. Mrs. Porter-Holmes stated for the record that they would proceed with a board of four.

The board reviewed the Draft Notice of Decision prepared by the Town Planner, as directed by the board at the hearing on December 1st. There were no changes made to the draft decision or further discussion regarding the hearing.

Motion: Mr. Nolin moved to approve the application for **Carlene Porter-Holmes and Myron Holmes (74-14)** for a variance, as detailed in The Draft Notice of Decision, and to authorize the Chairman to sign the Notice of Decision, seconded by Ms. Roseberry, passed by a vote of four (4) in favor (Stephens, Nolin, Roseberry, Zewski), 0 opposed, and 0 abstentions.

2. Continuation of Public Hearing - The Taylor Community (96-4)(Route 171)
Special Exception – Article VII (A)(1), Condominium Conversion

Mr. Nolin stepped down from the Board for this hearing. Mr. Stephens noted this was a continued hearing for a special exception for The Taylor Community and asked the applicant's agent if she wished to proceed with a board of three. Catherine Broderick, Esquire, representing The Taylor Community, stated for the record that she would proceed with a board of three.

Mr. Stephens noted correspondence from Mr. Hopkins regarding the Notice of Decision (NoD) for approval. Mr. Hopkins stated he had a concern and a recommended amendment to the NoD. His concern was while the NoD did recognize parts of the Ordinance and the criteria or their decision in the Facts of Findings, it did not indicate that the ordinance is part of the conditions of approval. Board members discussed this briefly with Mr. Merhalski commenting that he thought Mr. Hopkins concern was covered by the Findings of Fact.

Mr. Stephens asked if there were any questions from the public. Russ Nolin, on behalf of the West Wynde Farm Trust stated at the hearing on the 1st, his wife Linda requested the ZBA make a condition that there be no further development or expansion. Mr. Nolin stated they do not have any problem with what The Taylor Community has proposed, but noted no one knows what may happen in the future if and when the property is sold. He noted their concerns with future development or subdivision.

Ms. Broderick stated that The Taylor Community has been working with the West Wynde Farm Trust, but believes that such a restriction could be a problem with her client. She does not know if the ZBA has the authority to place such a restriction on this approval. They have applied for a special exception for a condominium conversion. If there were to be any future development or subdivision, it would require additional approvals from the boards.

Ms. Broderick requested a continuance to allow her to confer with her client, and she would like to have Attorney Dyer present to speak to the Statute governing condominium conversions.

Mr. Stephens requested that the Planner contact Town Counsel regarding this issue, and to ask him if the ZBA could place such a condition as to limit future development.

Motion: Mr. Stephens moved to continue the Public Hearing for **The Taylor Community (96-4)** to January 5, 2011, seconded by Mr. Zewski, carried unanimously.

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

3. Continuation of Public Hearing - 34 Sable Run Lane Nom. Trust c/o Alan & BethAnn Ayres, Trustees (237-12)(50 Braun Bay Road) Variance – Article III (B)(3)

Mr. Stephens questioned if the applicant was willing to proceed with a board of four. Jason Hill, Civil Engineer of Holden Engineering representing the applicant stated for the record that he would proceed with a Board of four.

Mr. Stephens noted this was a continued hearing for a variance and that the board had continued the hearing to allow time for the applicant to provide the board with additional information regarding the

size/dimensions of the existing structure and the proposed structure and the setback from the property line for the proposed new bunk house.

Mr. Hill had submitted reduced size revisions of the plan for the boards review. He referred to a full size plan on the board noting the plan indicates the existing structure is 16'x18', which encroaches 195 square feet. The proposed structure is 18'x22' and the proposed encroachment is 245 square feet. This results in an increase of 50 square feet of encroachment. The existing structure is 7' from the property line and the proposed structure will be 7' on one corner and 10' on the other corner. Mr. Hill stated they have obtained a Shoreland Permit from NH DES for the proposed project.

Mr. Hill briefly recapped the proposed improvements to the site which included foundation drains, drywell, mulch & bushes and erosion control measures. He briefly touched on each of the criteria for the granting of a variance. Mr. Hill testified that the end result of the proposal would be a more conforming lot. Mr. Hill answered any questions from the board.

Mr. Stephens asked if there were any questions from the public. Martin Ricciuti questioned the condition of the existing non-conforming structure proposed to be removed.

The board went into deliberative session to discuss each of the criteria for the granting of the variance. The board returned to Public Session, noting there was no further input from the board or audience. It was the decision of the board that the criteria for the granting of the variance were not met.

Motion: Mr. Zewski moved to continue the Public Hearing for **34 Sable Run Lane Nom. Trust c/o Alan & BethAnn Ayres, Trustees (237-12)** to January 5, 2011, and to direct staff to draft a Notice of Decision denying the request for a variance based on the Findings of Fact, seconded by Mr. Nolin, carried unanimously.

4. Frederick Surette, III (98-96)(22 Leisure Drive)
Variance – Article III (B)(3)

Mr. Stephens stated this was a hearing for a variance for Frederick Surette and asked the applicant if he wished to proceed with a board of four. Mr. Surette stated for the record that he would proceed with a board of four.

Mr. Surette presented the application for variance to allow a portion of his deck to remain in the required sideline setback. Mr. Surette stated that he has a Purchase and Sales Agreement for the sale of his home and has also signed a Purchase and Sales Agreement for a new house. During this process the perspective buyers discovered the deck encroached into the setback. Mr. Surette stated the need for the variance to allow the sale of his home and noted he was in jeopardy of losing the home he is purchasing.

Board members questioned when the home was built, when the deck was added and when Mr. Surette purchased the home. He stated the home was built in 1987, the deck was constructed in 2000 and he purchased in home in 2003. Board members noted the Lot was very narrow. Board members reviewed a letter dated June 22, 2000, from the Code Enforcement Officer and addressed to the prior owner. The letter indicated that there may be an issue with the location of the deck, and if in the future it was discovered that it was encroaching in the setback, that it would need to be addressed.

Martin Ricciuti, realtor for the applicant, noted the encroachment was discovered during survey work performed on the Lot for the sale of the property.

Mr. Stephens asked if there were any further questions from the public, it was noted there were none. The board went into deliberative session to discuss each of the criteria for the granting of the variance.

Motion: Mr. Zewski moved to continue the Public Hearing for **Frederick Surrette, III (98-96)** to January 5, 2011, and to direct staff to draft a Notice of Decision approving the request for a variance, seconded by Mr. Stephens, carried unanimously.

Mr. Surrette questioned if he would be receiving any written notice of decision from the board this evening, noting the urgency as the sale of his home and the ability to purchase the other is contingent upon the granting of the variance. Board members discussed this and were in agreement that they could reconsider their motion and direct the Planner to write the Notice of Decision and authorize the Chair to sign it.

Motion: Mr. Nolin moved to reconsider the above motion and to approve the application for **Frederick Surrette, III (98-96)** for a variance, and to authorize the Chairman to sign the Notice of Decision, seconded by Mr. Zewski, passed by a vote of four (4) in favor (Stephens, Nolin, Roseberry, Zewski), 0 opposed, and 0 abstentions.

V. Correspondence

1) The Board was provided with a draft of the 2011 ZBA Meeting Dates. Mr. Merhalski questioned if there were any changes the board would like to make at this time. None were noted.

Motion: Mr. Stephens moved to approve the 2011 ZBA Meeting Dates as presented, seconded by Mr. Nolin, carried unanimously.

2) Planning Board Draft Minutes of December 8, 2010 were noted.

VI. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:55 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant