

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

Regular Meeting

April 7, 2010

Minutes

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

I. Call to Order

Mr. Stephens called the meeting to order at 7:30 PM and appointed Nicol Roseberry and Bob Bernstein to sit on the board with full voting privileges in place of Ray Heal and Kevin M^cCarthy.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of March 17, 2010, seconded by Mr. Nolin, carried unanimously.

IV. New Applications

**1. Lucille M. St. Onge Revocable Trust (174-69)(214 Krainewood Drive)
Special Exception for Expansion of Non-Conforming Primary Structure**

This is an application for a special exception for the expansion of a non-conforming primary structure located on Tax Map 174 Lot 69. The Chairman and the Land Use Staff have reviewed the application and it appears complete for board action. Mr. Stephens noted the application was submitted on March 18th and in order to be compliant with the statute the board must act on this application this evening. Proper abutter notification has been completed for the board to hold the public hearing this evening.

Motion: Mr. Hopkins moved to acknowledge the application of the **Lucille M. St. Onge Revocable Trust (174-69)** for a special exception and to schedule a hearing for this evening to be hearing #2. Seconded by Mr. Nolin, carried unanimously with Ms. Roseberry abstaining.

**2. Kevin & Katherine Oliver (217-44)(44 Black Cat Island Road)
Variance from Article III, Paragraphs B (1)(3)(4) [Home & Garage]**

This is a request for a variance from Article III, Paragraphs B(1)(3) and (4) of the Zoning Ordinance, to permit the removal of the existing 3 bedroom ranch style home and deck down to the concrete foundation and replacing it with a two story, 3 bedroom home with a two car attached garage with living space over it, within the required 50' setback from the centerline, within the required 25' setback from the edge of the ROW and within the required 50' setback from the lake.

The Chairman and the Land Use staff have reviewed the application package and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **Kevin & Katherine Oliver (217-44)** for a variance and to schedule a hearing for April 21, 2010, seconded by Ms. Roseberry, carried unanimously.

**3. Kevin & Katherine Oliver (217-44)(44 Black Cat Island Road)
Variance from Article III, Paragraphs B (1)(3)(4) [Accessory Structure]**

This is a request for a variance from Article III, Paragraphs B(1)(3) and (4) of the Zoning Ordinance, to permit the construction of a 170 s.f. accessory deck (17' x 10') less than 50' from the lake, less than 25' from the edge of the ROW and less than 50' from the centerline of the improved roadway.

The Chairman and the Land Use staff have reviewed the application package and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **Kevin & Katherine Oliver (217-44)** for a variance and to schedule a hearing for April 21, 2010, seconded by Ms. Roseberry, carried unanimously.

**4. William R. & Karen Palma Halliday (147-29)(180 Wentworth Shores Road)
Special Exception for Expansion of Non-Conforming Primary Structure**

This is an application for a special exception for the expansion of a non-conforming primary structure located on Tax Map 147 Lot 29.

The Chairman and the Land Use Staff have reviewed the application and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **William R. & Karen Palma Halliday (147-29)** for a special exception and to schedule a hearing for April 21, 2010, seconded by Ms. Roseberry, carried unanimously.

V. Hearings

**1. Continuation of Public Hearing - David S. Severance & Julianne P. Daniels (152-2)
(133 Severance Road) Special Exception for Commercial Use**

Mr. Stephens stated this was a continued hearing for David Severance & Julianne Daniels, for a special exception for commercial use.

The board reviewed the Draft Notice of Decision prepared by the Town Planner, as directed by the board at the hearing on March 17th. There were no changes made to the draft decision and no other discussion regarding this hearing.

Motion: Mr. Hopkins moved to deny the application of **David S. Severance & Julianne P. Daniels (152-2)** for a special exception, as detailed in the Draft Notice of Decision, and authorize the Chairman to sign the Notice of Decision, seconded by Mr. Bernstein, passed by a vote of 4 in favor (Stephens, Hopkins, Roseberry, Bernstein), 0 opposed, and 1 abstention (Nolin).

2. **Lucille M. St. Onge Revocable Trust (174-69)(214 Krainewood Drive)**
Special Exception for Expansion of Non-Conforming Primary Structure

Ms. Roseberry did not participate in the Public Hearing for the Lucille M. St. Onge Revocable Trust.

Mr. Stephens noted that there were only four members present for this evening and that the applicant is entitled to a full board of five members. Mr. Stephens questioned if the applicant was willing to proceed with a board of four, noting if they choose 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.

Dan Ellis of Ames Associates, representing the Trust, stated for the record that they would proceed with a Board of four. Present in the audience for the hearing were Mr. & Mrs. St. Onge. Mr. Ellis briefly described the project, which is to remove the existing non-conforming structure and build a new structure which will be shifted 5” further from the lake and will meet the side setback. They are adding a screened breezeway and garage, which will both be conforming. They will still be encroaching in the lake setback area. It was noted the present intrusion into the lake setback area is 675 s.f. The proposed new intrusion is 170 s.f., or 25%. Mr. Ellis noted the existing total setback intrusion is 723 s.f. and will be reduced to 664 s.f. Mr. Ellis addressed each of the criteria for the granting of a special exception.

Mr. Hopkins questioned the topography of the lot. Mr. Ellis stated that it is fairly flat, with a drop of about ten feet from the road to the edge of the shore.

Mr. Stephens questioned an area on the plan show in red hatch marks. Mr. Ellis stated that was deck area and a portion of the corner of the house. Mr. Stephens questioned if this required a permit from the state. Mr. Ellis stated yes, and that the application has been submitted and is pending at this time.

Mr. Nolin questioned if the proposal was a tear down. Mr. Ellis stated yes.

Mr. St. Onge spoke to his request for the special exception, noting they had originally planned to complete this project a few years ago prior to retiring and moving here full time, but due to unforeseeable circumstances they were unable to move forward until this year.

Mr. Stephens asked if there were any questions from the board or public, it was noted there were none. The board went into deliberative session to discuss each of the criteria for the granting of the special exception. The Board went into deliberative session at 7:58 P.M. and came out at 8:03 P.M.

There was no further input from the board or audience.

Motion: Mr. Hopkins moved to continue the Public Hearing for the **Lucille M. St. Onge Revocable Trust (174-69)** to April 21, 2010, and to direct staff to draft a Notice of Decision granting the special exception for the expansion of a non-conforming primary structure, seconded by Mr. Bernstein, passed 3 to 1 with Mr. Nolin opposing.

VI. Correspondence

- 1) Mr. Stephens noted a memo dated April 6, 2010, regarding Land Use Boards’ Budgets.
- 2) Planning Board Minutes of March 10th and PB Draft Minutes of March 24, 2010 were noted.

3) Board of Selectmen Draft Minutes of April 1, 2010 were noted.

VII. Unfinished Business

1) Mr. Stephens stated the Board had continued the election of officers from the March 17th meeting to this evening to allow a full board of five. As there were not five members present this evening it was the consensus of the board to defer the Organizational Meeting again to April 21st, so that all five elected members may be present to vote for the election of Chairman and Vice Chairman. Mr. Merhalski provided the board with copies of the ZBA Bylaws and Policies, noting the need for amendments to them. According to the ZBA Bylaws and Policies the Board should elect a Chair and Secretary, however, the Bylaws are incorrect in stating that election of such should be by ballot vote, as RSA 91:A, the Right to Know Law, expressly prohibits secret ballot voting for any body outside of Town Meeting and poll elections. Mr. Merhalski stated the Board may also wish to designate the Land Use Staff to carry out the procedural responsibilities of the Secretary in reference to the Minutes, Notices and Decisions, etc. There are a number of other procedural errors that are contained in the Bylaws that the Board may wish to amend at a future meeting, mostly dealing with amendments to statute that have been enacted since the prior amendments to the Bylaws were approved in 2008, and earlier. It was the decision of the Board to instruct the Planner to make the necessary amendments to the Bylaws in reference to the statute and they will review and/or amend their policies at their next meeting.

2) The Board held a Discussion regarding Article VII (B) (3) – Expansion of Non-Conforming Structure - for the possible request to Planning Board for clarification in Zoning Ordinance. The Town Attorney, Peter Minkow, provided the Board with a legal opinion, per their request, referring to the definition of “Expansion” for Article VII (B)(3) of the Zoning Ordinance. Counsel stated that the practice of tearing down a structure and erecting a new one is not an “expansion” per the ordinance. It would then stand to reason that the ZBA must decide to either change the way that they are applying the ordinance, or make a request to the Planning Board to amend the Zoning Ordinance to reflect the Board’s actions. He also stated that the Board may want to amend their past practices with a policy statement, but that a Public Hearing is not necessary, and that the Board does not need to restrict applying the ordinance under this determination, if it wishes to, based on past practice. In this case, the Board can interpret the ordinance on a case by case basis, and past practice is not binding on future (or current) applications. Board members each expressed their thoughts and opinions on how this has been interpreted and applied in the past and how it should be going forward. There were several questions each had regarding this and the Planner asked if the Board would like to meet with Counsel to be able to better understand the direction in which the Board will take when acting on applications in the future. The Board was in agreement to have the Planner set up a meeting time with Counsel to discuss Article VII (B) (3).

VIII. Adjournment

Motion: Mr. Bernstein made the motion to adjourn at 8:56 PM, seconded by Mr. Hopkins, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant