

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

**Regular Meeting**

**April 21, 2010**

**Minutes**

Present: Members: Bob Stephens, Jerry Hopkins, Russell Nolin, Ray Heal,  
Kevin M<sup>c</sup>Carthy (arrived at 8:09); Town Planner, Dan Merhalski  
Excused: Alternates: Nicol Roseberry, Bob Bernstein

**I. Call to Order**

Mr. Stephens called the meeting to order at 7:30 PM and noted that Kevin M<sup>c</sup>Carthy had indicated that he would be arriving late this evening.

**II. Pledge of Allegiance**

**III. Approval of Minutes**

**Motion:** Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of April 7, 2010, seconded by Mr. Nolin, carried unanimously.

**IV. New Applications**

**V. Hearings**

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

The board reviewed the Draft Notice of Decision prepared by the Town Planner, as directed by the board at the hearing on April 7<sup>th</sup>. There were no changes made to the draft decision or further discussion regarding the hearing.

**Motion:** Mr. Hopkins moved to approve the application of **Lucille M. St. Onge Revocable Trust (174-69)** for the expansion of a non-conforming primary structure, as detailed in the Draft Notice of Decision, and authorize the Chairman to sign the Notice of Decision, seconded by Mr. Heal, passed by a vote of 3 in favor (Stephens, Hopkins, Heal), 0 opposed, and 1 abstention (Nolin).

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

Mr. Stephens noted that there were only four members present at this time 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.

Kevin & Katherine Oliver were present for the hearing and stated they would like a full board of five. Mr. Oliver asked if they could be put to the end of the agenda and wait for Mr. M<sup>c</sup>Carthy to arrive.

**Motion:** Mr. Hopkins moved to suspend the Public Hearing for **Kevin & Katherine Oliver (217-44)** to 8:00 PM, seconded by Mr. Nolin, carried unanimously.

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

Mr. Stephens reiterated for the record that there were only four members present at this time 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.

Dave Dolan of David M. Dolan Associates, PC, representing William & Karen Halliday stated for the record that they would proceed with a Board of four. Present in the audience for the hearing was William Halliday. Mr. Dolan briefly described the project, which is to construct two additions to the existing non-conforming structure. It was noted the present intrusion into the lake setback area is 2,373 sq. ft. and the proposed new intrusion is 959 sq. ft. or 40.4%. Mr. Dolan stated the existing intrusion does not include the area of the garage intrusion of 739 s.f. and that the proposed additions are not getting any closer to the lake. The applicant has received the required shoreland waiver from the NH DES.

Mr. Nolin questioned for the record that the proposal was just an addition and not a tear down. Mr. Dolan stated yes, that it was not a tear down.

Mr. Stephens asked if there were any 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 special exception at 7:47 PM and came out at 7:49 PM. There was no further input from the board or audience.

**Motion:** Mr. Hopkins moved to continue the Public Hearing for **William R. & Karen Palma Halliday (147-29)** to May 5, 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. Nolin, carried unanimously.

## **VI. Correspondence**

- 1) Planning Board Draft Minutes of the April 14<sup>th</sup> On-site visit and April 14, 2010 meeting were noted.
- 2) Board of Selectmen Draft Minutes of April 15, 2010 were noted.

The board took a recess from 7:54 PM to 8:00 PM. Mr. M<sup>c</sup>Carthy had not arrived at this time, so the Board started the review of their By-Laws and Policies while waiting for Mr. M<sup>c</sup>Carthy.

### **Review of ZBA By-Laws and Policies**

Mr. Merhalski provided the board with copies of the ZBA By-Laws and Policies, which were last reviewed and updated in 2008. At the meeting on April 7<sup>th</sup> the Board had asked the Planner to create a revised Draft of the By-Laws and Policies for review this evening. There were a number of amendments made for procedural changes (outlined in RED). The Board reviewed pages 1-3 of the Draft By-Laws and Policies and were in agreement with the amendments as noted by the Planner. Mr. M<sup>c</sup>Carthy arrived at 8:09 PM and the Board then proceeded with the Public Hearings for Kevin & Katherine Oliver.

2. **Continuation of Public Hearing - Kevin & Katherine Oliver (217-44)**  
**(44 Black Cat Island Road)**

Variance from Article III, Paragraphs B (1)(3)(4) [Home & Garage]

Mr. Stephens stated this was a request for a variance from Article III, Paragraphs B(1)(3) and (4) of the Zoning Ordinance for the home and garage. Mr. Stephens noted the Oliver's have submitted two separate applications for variances on the same property.

Kevin Oliver presented the application for the first variance. Present in the audience was Katherine Oliver and their agent William M<sup>c</sup>Nair. Mr. Oliver briefly described their request for a variance was 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. This will require a shoreland waiver from the State of NH DES, which has not been applied for at this time. They made the decision to apply for approval from the town first. Mr. Oliver and Mr. M<sup>c</sup>Nair answered any questions from the Board.

Board members questioned if this request was on the correct application, or if it should be an application for a special exception for expansion of a non-conforming structure. It was noted the Code Enforcement Officer had indicated the proposal would require an approval for a variance. Mr. Merhalski commented that he believed the request was on the proper application. After a lengthy discussion, and noting that this was a tear down, the majority of the Board were in agreement to proceed with the request as presented.

The Board discussed at length the size of the lot, the fact that it has road frontage on two sides and the pavement of the road encroaches over the property pin. The Board discussed the possibility of an On-site visit. The majority of the members were familiar with the location of the and felt there was sufficient material presented to make a decision without conducting an on-site. Board members reviewed the materials presented, which included the plan, sketches and photos of the site. It was noted they will be using the existing foundation and that the septic is offsite. They will be submitting an application to the State of NH DES for septic and shoreland waiver.

Mr. Stephens asked if there were any questions from the public, it was noted there were none. The board went into deliberative session at 8:44 PM. The board then discussed each of the five criteria in deliberative session. The board returned to public session at 8:53 PM. There was no further input from the board or audience.

**Motion:** Mr. Hopkins moved to continue the Public Hearing for **Kevin & Katherine Oliver (217-44)** to May 5, 2010, and to direct staff to draft a Notice of Decision approving the request for a variance as requested, seconded by Mr. Stephens, carried unanimously.

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

Mr. Stephens stated this was 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.

Mr. Oliver presented the application for variance for the accessory deck. Mr. Oliver briefly described the proposed location of the deck, indicating it was to create a level area to place chairs near the water. Mr. Oliver and Mr. M<sup>c</sup>Nair answered any questions from the Board.

Board members questioned if the proposed use was allowed by the State and the Town. Mr. M<sup>c</sup>Nair had submitted a copy of a section of the New Hampshire Code of Administrative Rules which applied to Accessory Structures with the application. Mr. M<sup>c</sup>Nair then referred to a section of the Zoning Ordinance [Article IX, F (9)] which allow for the “construction or placement, of sheds or accessory structures which occupy a ground area of no greater than 150 square feet in size...” Mr. Merhalski stated that this section did not apply to this request. That article is for the wetland overlay district.

The Board discussed the request at length, regarding the type of construction material and if there were another way to achieve a level area to place chairs. Board members were not certain of what is considered a structure by both the state and the town. It was noted the town was more restrictive than the state and the town’s requirements would supersede the state.

Mr. Stephens asked if there were any questions from the public, it was noted there were none. The board went into deliberative session at 9:15 PM. The board then discussed each of the five criteria in deliberative session. The board returned to public session at 9:22 PM. There was no further input from the board or audience.

**Motion:** Mr. Hopkins moved to continue the Public Hearing for **Kevin & Katherine Oliver (217-44)** to May 5, 2010, and to direct staff to draft a Notice of Decision **denying** the request for a variance for the failure to meet the criteria, seconded by Mr. Nolin, carried unanimously.

## **VII. Unfinished Business**

### **Continuation of Review of ZBA By-Laws and Policies – 9:23 PM**

The Board continued their review of the Draft By-laws and Policies and were in agreement with the amendments as noted by the Planner. Mr. Hopkins suggested several minor changes to the Draft. There were several policies that are proposed to be removed, as they are addressed in the By-Laws or by statute. Board members requested a “History” page be created, showing what and when a policy was amended or deleted. This would assist subsequent boards in the future with background as to how or why something was applied and/or interpreted during that period by the Board at that time.

The board discussed then their current policy of reviewing the applications at the Board level, and then scheduling a Public Hearing for a later date. Mr. Merhalski stated in most jurisdictions with Planning Staff, the ZBA directs the staff to review applications for completeness (signature on application, fee paid, abutters’ notifications, etc.) and schedules the Hearings for the ZBA meetings in accordance with statute. The agendas are reviewed by the ZBA Chair prior to posting. This possible method of operation would allow for the ZBA to (potentially) review an application and have a reviewed, final decision in two meetings, rather than the current three meetings. Board members were in agreement to change the manner in which applications are submitted to the Land Use Office and scheduled for hearing.

Mr. Merhalski will make the changes as discussed this evening and provide the board with a final copy to be voted on and signed at their next meeting.

**2010 Board Organization – Election of Officers**

As Senior Member, Mr. Hopkins called the organizational meeting to order at 10:00 PM. Mr. Hopkins asked for any members interested in serving as Chairman to identify themselves. Mr. Stephens and Mr. Hopkins both indicated they were interested in serving as Chairman. Mr. Hopkins asked Board members to show by a vote of hand those in favor of Mr. Stephens serving as Chairman, vote of three (3) (M<sup>c</sup>Carthy, Heal, Stephens) and those in favor of Mr. Hopkins serving as Chairman, vote of two (2) (Nolin, Hopkins). Mr. Hopkins then asked for any members interested in serving as Vice Chairman to identify themselves. Mr. Hopkins indicated he was willing to serve as Vice Chairman. Mr. Hopkins asked Board members to show by a vote of hand those in favor of Mr. Hopkins as Chairman, vote of five (5) in favor (M<sup>c</sup>Carthy, Heal, Stephens, Nolin, Hopkins).

**VIII. Adjournment**

**Motion:** Mr. Stephens made the motion to adjourn at 10:06 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant