

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

Regular Meeting

September 7, 2011

Minutes

Present:	Members:	Bob Stephens, Russell Nolin, Ray Heal, Nicol Roseberry
	Alternates:	Robert Zewski, Joseph Crowe; Dave Holden – Interim Planner
Excused:	Member:	Jerry Hopkins

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 Mr. Crowe to sit on the board with full voting privileges in place of Mr. Hopkins.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Nolin moved to approve the Zoning Board of Adjustment Minutes of August 17, 2011 as written, seconded by Mr. Crowe, carried unanimously.

IV. Hearings

1. Continuation of Public Hearing - Peter R. & Susan W. White (186-12)(34 Wallbridge Way)
Special Exception from Article VII B(3)

Mr. Stephens stated this was a continued hearing for Peter & Susan White. It was noted for the record that no one was present this evening representing the applicant.

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on August 17th. There were no changes made to the draft decision or further discussion regarding the hearing.

Motion: Mr. Nolin moved to approve the application for **Peter & Susan White (186-12)** for a special exception, as detailed in the Draft Notice of Decision, and to authorize the Chairman to sign the Notice of Decision, seconded by Mr. Crowe, passed by a vote of five (5) in favor (Stephens, Nolin, Heal, Roseberry, Crowe), None (0) opposed and 0 abstentions.

2. Continuation of Public Hearing - Scott & Elizabeth Dolfi (188-30)(80 Wyman Trail)
Variance from Article III (I)

Ms. Roseberry stepped down from the board at this time. Mr. Stephens appointed Mr. Zewski to sit on the board with full voting privileges.

Norman Larson of Christopher P. Williams, Architects and Betsey Dolfi were present for the hearing. Mr. Larson stated that he had met on-site with the Fire Chief and Bob Stephens to view the location of the proposed dwelling and inspect the land in relation to the topography in regards to the height of the building. It was noted one of the primary reasons for the height restrictions was for life/safety. Mr. Larson provided the board with a drawing showing the elevations and the height of the proposed building in 10' intervals, taken from the finished grade to the ridge.

Chief Bengtson submitted an e-mail to the board stating "As presented, I see no access issues regarding the height of the building."

Mr. Larson stated it was his understanding that one issue was hardship and he noted that the applicant was taking into consideration the natural topography of the land, and trying to keep the site unchanged, including the removal as few trees as possible.

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 variance at 7:41 PM and came out at 7:43 PM.

Motion: Mr. Zewski moved to continue the Public Hearing for **Scott & Elizabeth Dolfi (188-30)** to September 21, 2011, and to direct staff to draft a Notice of Decision granting the variance, seconded by Mr. Heal, carried unanimously.

Ms. Roseberry returned to the Board at this time with full voting privileges.

3. Nancy Sears Barker (236-21)(100 Echo Landing Road)
Variance from Article III (B)(3)

Stephen Sheffer was present representing the applicants. Mr. Sheffer provided the Board with a packet of material which included a copy of the Tax Map, NH DES Shoreland Permit 2010-02823, copy of a portion of a septic design (showing the location of the structure), a sketch of the dwelling showing the proposed addition and correspondence from the abutter Chris Carlsmith. Mr. Sheffer briefly described the existing cabin and the proposed 7' x 20' addition, which is to be approximately 8' off the property line. The corner of the existing dwelling is approximately 8' from the property line and the proposed addition will not encroach any closer to the line than the existing dwelling. Mr. Sheffer referred to the septic design for the location of the dwelling.

At this time Ms. Roseberry realized the septic plan had been prepared by her employer, Ames Associates. She stated that she had not worked on the project and felt that she could be non-biased for the public hearing. Mr. Stephens polled the board in regards to Ms. Roseberry remaining seated on the board. It was the consensus of the board to allow Ms. Roseberry to remain seated as a voting member

Mr. Stephens noted that there was a discrepancy in the distance from the property line from testimony given by Mr. Sheffer to the distance shown on the sketch provided with the application. Mr. Stephens questioned if they had a reference point showing where the property line was. Mr. Sheffer stated yes. It was also noted the application indicated the proposed addition was 7' x 24' and that Mr. Sheffer stated it was 7' x 20'. Mr. Sheffer apologized for the discrepancies, and stated the addition was 7' x 20' and it would be 8' from the property line.

Dale Mayer spoke in favor the granting of the variance and gave a brief history of the property dating back to 1937.

Mr. Nolin noted his concerns with the discrepancies of the measurements. The board required the applicant to provide an accurate sketch to quantify the physical size and dimensions of the addition, which will be required at the continued hearing on September 21st.

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 variance at 8:05 PM and came out at 8:10 PM.

Motion: Ms. Roseberry moved to continue the Public Hearing for **Nancy Sears Barker (236-21)** to September 21, 2011, and to direct staff to draft a Notice of Decision granting the variance, seconded by Mr. Heal, passed by a vote of Four (4) in favor (Stephens, Roseberry, Heal, Crowe), One (1) opposed (Nolin), and 0 abstentions.

Mr. Stephens seated Mr. Zewski as a full voting member in place of Mr. Crowe at this time.

4. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway)
Variances from Article III (A), Article VI (E)(1), (F)(1), (F)(2) & (F)(6.D & E)

Mr. Stephens noted this application submitted by Rock Pile Real Estate contained a request for five (5) variances and would be followed by an application for a special exception.

Mr. Zewski stated the Board was in receipt of a memo from Dave Holden, Interim planner and he noted the Board of Selectmen's (BoS) Draft Minutes of September 1st regarding this property. Mr. Zewski asked if this was something that the board should take into consideration. The Board took a few minutes to review the BoS Draft Minutes regarding the property and the possible sale of a small piece of land that is now a portion of the Right-of-Way. Mr. Holden stated that while the applicant is proceeding forward with the BoS regarding this small piece of land, it is not a factor for either of the applications before the board this evening.

Kim and Michael Prause were present for the hearings. Ms. Prause stated that they have gone forward with the applications not including the land, ROW, in question. The board took each of the requests in order from Mr. Holden's memo.

Mr. Stephens suggested since the Special Exception triggered the need for some of the variances, a consideration for the Special Exception might be in order first, since without approval for commercial use, many of the variances would not be needed. After reviewing the criteria for the Special Exception, the Board agreed the criteria could not be satisfied without the variances.

Rock Pile Real Estate, LLC, Variance from Article VI (F)(1), frontage under 150'. Technically the lot does not have any frontage on Route 109 or 109A. The variance is to continue the use of the two driveways that currently exists. Mr. Prause spoke to each of the criteria, indicating that the proposed parking doesn't present any encroachment into the ROW, nor does it present any safety hazard coming off the road that exists now.

Mr. Nolin asked if the Board had considered holding a joint meeting with the Planning Board, as there was a lot of information to take into consideration and dealt with. There was no response to the question.

Mr. Stephens commented in one form or another all of the variance are tied together, and if one is not acceptable it would have implications to others. Mr. Nolin questioned if some of the variances were granted, and some denied, do the variances granted run with the property? Mr. Holden stated this

would be a question for counsel, but there is one application before the board that has numerous requests, if the application fails the vote to pass, then it goes away. If the board approves it, and some of the variances may not have been granted, and the project can be done without those variances, it could go forward. Mr. Holden stated it is ultimately keyed on the motion, if it is a motion to approve the application that fails, then it should be followed by a motion to deny it. It needs to be a clean action on the part of the board.

The board continued with this request for a variance dealing with the lack of frontage. The property has no frontage. Ms. Roseberry questioned the description of the ROW, and the language for the use of the ROW, what does it allow? Mr. Stephens questioned if the Town had looked into what the ROW allows. Mr. Holden stated that information had not been submitted, nor has the nature of the ROW been presented. He has been led to believe that it was for access and egress, but he has not seen it. Ms. Prause did not know the terms of the ROW. She commented that she had seen on another plan that the ROW did allow for access and egress on the existing driveway, but she had not seen the paperwork for that. Mr. Stephens stated effectively what the ROW allows, impacts the ability to utilize that portion of the property which is within the deeded rights. Ms. Prause commented that the building has been in existence since 1920. Mr. Stephens stated that the grandfathering rights go away after one year of non use.

The procedure in which the board will take is to vote on each of the variances individually.

Mr. Holden encouraged the board to obtain from the applicant any materials they may have relevant to the other variances, so they have been afforded the opportunity to address things such as minimum land space requirements or parking layout. He suggested the applicant give her presentation for the entire project to the board.

Rock Pile Real Estate, LLC, Variance from Article VI (F)(6), parking /loading within setbacks

Ms. Prause stated that this section of the ordinance spoke to the screening for parking and loading areas as well as parking within the setbacks. She stated they have proposed parking shown on the plan, one (1) hand-capped, three (3) employee to the rear of the building and three (3) for customers. This is an existing non-conforming lot and not a lot of spaces for them to go besides in the setbacks. Mr. Nolin questioned where will the snow go? Ms. Prause pointed out the area shown on the plan. Ms. Roseberry questioned how the employees are to get in and out if the customer spaces were occupied? Ms. Prause commented, they would need to wait until someone left. Mr. Stephens questioned how you can put snow in the location depicted on the plan and still have vehicles maneuver. Ms. Prause commented that they plan to store as much on site and if it doesn't work there they can have it taken off site.

Ms. Prause commented that the plan for the building was not for a sit down restaurant/service, there will be some limited seated, but will not be designed to stay for your entire meal, most of the business will be concentrated on take-out and pick-up.

Mr. Stephens commented that the ordinance reference indicates that parking shall not be located within the setbacks, though green buffers and vegetative screening is permitted within the setback. Ms. Prause stated there is a stockade fence in existence that buffers the parking from the Burbank property and a thick woods area along the White property. Mr. Nolin commented that the wooded area was on the White property and not the applicant's property.

Mr. Stephens questioned the proposed use of the property. Ms. Prause replied a coffee shop/bakery, with limited seating, no table service, with an emphasis on take-out.

Mr. Crowe questioned when they acquired the property and if the applicant at anytime prior too,

during the negotiations or after the purchase, discuss their intentions with anyone regarding this proposal and a solution prior to applying to the ZBA? She commented that they had just recently purchased the property as is, and they had two proposed uses, one for the commercial use before the board, and the other to develop the site for a rental property. She feels that all of the variances would apply to either of the proposed uses, and the coffee shop/bakery is the one they would prefer. Ms. Prause stated they did receive information about the triangle (area of land in ROW), just a reference to the ROW as access and egress for the property.

Mr. Stephens noted the issue before the board for this particular variance application was the fact that there will be seven (7) proposed parking spaces that are contained within the setback.

Rock Pile Real Estate, LLC, Variance from Article VI (E)(6), applied for as Article III (A) Minimum Lot Size.

Ms. Prause stated the current lot measures 8,345 sq. ft. and they were asking for a variance from the minimum lot size. There is an existing septic with two tanks, one for kitchen waste and a second for the remaining waste, with a grease trap and a leach field shown on the plan. The septic was inspected by Scott Lamprey. There is a State of NH approval for construction and use, which has not been hooked to the building. The plan is currently approved for an ice cream shop and they have a plan with one public bathroom and a commercial kitchen.

Rock Pile Real Estate, LLC, Variance from Article VI (E)(1) Vegetative Buffer

Ms. Prause commented as stated before, while not vegetative, there is a stockade fence along the Burbank property and trees on the White property. They do have some of the fence left and could install it along the White property line. There will not be any parking along the White property line. The proposed hours of operation are 6:30 am – 4 pm, and no evening hours at this time. If they chose evening hours it would only be once a month, not regular hours, but they are not asking for evening hours now.

The Board questioned the height of the existing fence and the location of the fence. As shown on the plan, only a small portion of the fence is located on the applicant's site. If this particular variance is approved, the board required that the fence relocated onto the applicant's property and that they install one-hundred thirty feet of fence, six (6) feet in height along the White property line in a SW direction.

Rock Pile Real Estate, LLC, Variance from Article VI (F)(2) waiver of front, side and rear setbacks

Ms. Prause stated that this was an existing non-conforming lot, with no proposed changes to the building, which is an existing non-conforming structure. She already addressed the vegetative buffer and screening and are not proposing any changes that will encroach further to the Lot lines.

Mr. Stephens noted that there was not a loading area depicted on the plan. Ms. Prause indicated they would use the service entrance, and that deliveries would be made by Sysco in a 24' truck. She noted while this setup would not be ideal, there are not a lot of space. If deliveries were made during the day, the delivery truck could block parking spaces as the lot is very tight.

Mr. Heal questioned how the employees would access their parking spaces. It was noted they would have to wait if a customer was blocking those spaces in.

Mr. Holden stated for the record it was determined by the Code Enforcement Officer and himself that a variance was not required for the setbacks of the existing structure. It was noted this was an existing structure with no new proposed expansion, therefore it does not apply. Based on staff

Motion: Mr. Stephens moved that the Board take no action on the variance from Article VI (F)(2) regarding front, side and rear setbacks, seconded by Mr. Zewski, carried unanimously.

5. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway)
Special Exception – Article VI Paragraph E

Ms. Prause continued with her next application, which was for a special exception. She stated the proposed use is for a coffee shop/bakery, noting that it is not out of character with other uses along Route 109 such as Skelley's and Buckey's. The proposed use is not changing the face of the corner, but improving it, as it is now a dilapidated building, and a commercial use is not out of character.

Joanne Coppinger requested clarification of one of the variance required, noting Article VII (B)(1), which states "All non-conforming properties and uses in the Town of Moultonborough at the time of the adoption of this ordinance may continue in their present use. If such non-conforming use is determined discontinued or abandoned, any future use shall, thereafter, conform to the regulations of the Town of Moultonborough, and the non-conforming use may not, thereafter, be resumed without approval from the Zoning Board of Adjustment." Mr. Stephens commented that the Board determined that variance was not required.

Cristina Ashjian questioned how the Board will prevent or protect properties along Routes 109 and Old Route 109 from the same problems that exist with Skelley's, trucks stopped and parking along the roadside and causing visibility problems for abutter's, customers and motorist on Route 109? Mr. Crowe would like the board to address Ms. Ashjian's question. Mrs. Coppinger questioned how the Board could hold an applicant responsible for the illegal actions by a motorist. It was felt that this would be an enforcement issue.

Mr. Stephens stated the board would now go into deliberative session for each of the variances requested and the special exception. While they were in deliberative session no public input would be allowed. Once they come out of deliberative session, the applicant or public would have the opportunity to make comments prior to the motion.

Rock Pile Real Estate, LLC, Variance from Article VI (F)(1), frontage under 150'.

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 variance from Article VI (F)(1) at 9:20 PM and came out at 9:50 PM.

Motion: Mr. Zewski moved to continue the Public Hearing for **Rock Pile Real Estate, LLC, (44-13)** to September 21, 2011, and to direct staff to draft a Notice of Decision denying the variance, seconded by Mr. Nolin, passed by a vote of Five (5) in favor (Stephens, Nolin, Roseberry, Heal, Zewski), (0) opposed, and 0 abstentions.

Ms. Prause asked to speak to the motion, indicating that going forward they were in the process of acquiring the ROW which would allow for parking on-site, and the closure of the entrance/exit onto Route 109. She asked if the board would table this component of the variance application until she has further information on the ROW. Mr. Holden stated the felt this application was prematurely before the board and that the applicant must make a decision on what the proposed use was to be, residential or commercial? Ms. Prause requested that this application be tabled to September 21st to allow for exact language on the terms of the ROW.

Motion: Mr. Stephens moved that the Board re-consider the prior motion, seconded by Ms. Roseberry, passed by a vote of Four (4) in favor (Stephens, Roseberry, Heal, Zewski), One (1) opposed (Nolin), and 0 abstentions.

Motion: Mr. Stephens moved that the Board nullify the motion to deny the application and to accept the applicants request to continue the hearing to September 21, 2011, seconded by Mr. Heal, carried unanimously.

Rock Pile Real Estate, LLC, Variance from Article VI (F)(6), parking /loading within setbacks

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 variance from Article VI (F)(6) at 10:05 PM and came out at 10:20 PM.

Ms. Prause commented that she had spoken with her neighbors and have had no negative comments, noting she had not heard from abutters Wakefield or White.

Ms. Coppinger commented that two of the side setbacks are to Route 109 and Old Route 109.

Motion: Mr. Stephens moved to continue the Public Hearing for **Rock Pile Real Estate, LLC, (44-13)** to September 21, 2011, and to direct staff to draft a Notice of Decision granting the variance, seconded by Ms. Roseberry, passed by a vote of four (4) in favor (Stephens, Roseberry, Heal, Zewski), One (1) opposed (Nolin), and 0 abstentions.

Rock Pile Real Estate, LLC, Variance from Article VI (E)(6), applied for as Article III (A) Minimum Lot Size.

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 variance from Article VI (E)(6) at 10:23 PM and came out at 10:24 PM.

Motion: Mr. Zewski moved to continue the Public Hearing for **Rock Pile Real Estate, LLC, (44-13)** to September 21, 2011, and to direct staff to draft a Notice of Decision granting the variance, seconded by Mr. Stephens, passed by a vote of four (4) in favor (Stephens, Roseberry, Heal, Zewski), One (1) opposed (Nolin), and 0 abstentions.

Rock Pile Real Estate, LLC, Variance from Article VI (E)(1) Vegetative Buffer

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 variance from Article VI (E)(1) at 10:25 PM and came out at 10:33 PM.

Motion: Ms. Roseberry moved to continue the Public Hearing for **Rock Pile Real Estate, LLC, (44-13)** to September 21, 2011, and to direct staff to draft a Notice of Decision granting the variance, conditional upon a fence being installed at a Minimum of 6' in height, to match existing fence and a minimum of 130' in a SW direction from the property pin along the White property line, and to relocate the existing fence along the SE property line to be on Tax Map 44 Lot

13, seconded by Ms. Roseberry, passed by a vote of four (4) in favor (Stephens, Roseberry, Heal, Zewski), One (1) opposed (Nolin), and 0 abstentions.

Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Special Exception – Article VI (E)

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 from Article VI (E) at 11:02 PM and came out at 11:18 PM. Upon returning to public session Mr. Stephens called for a vote.

Motion: Mr. Zewski moved to continue the Public Hearing for **Rock Pile Real Estate, LLC, (44-13)** to September 21, 2011, and to direct staff to draft a Notice of Decision denying the special exception.

Ms. Prause requested the opportunity to speak to the application prior to the vote on the motion on the floor. She gave a brief recap of their proposal and requested that the board allow her to withdraw her application for special exception at this time.

Ms. Ashjian made a general statement at this time noting that the site has significant challenges and due to a prior approval made by the ZBA, there is a high truck traffic count on Route 109, and once this request was approved there will be no way to stop the traffic and trucks from stopping. There would be a lot of heartache and headaches if this were approved.

Mr. Crowe requested that a traffic impact study be completed if and when the applicant files again. Mr. Stephens asked if the board thought that such a study would be a financial risk of the applicant. Ms. Coppinger stated that it would be fairly unconventional for a traffic study to consider the illegal movements of a truck. Ms. Ashjian urged the board to think about the major safety issues.

Ms. Prause formally requested that her application for special exception be withdrawn at this time.

Motion: Mr. Stephens moved that the board accept the applicants (**Rock Pile Real Estate, LLC**) request to withdraw the application for special exception and to require such request to be in writing, seconded by Ms. Roseberry, carried unanimously.

VI. Correspondence

- 1) Planning Board Draft Minutes of August 24th and 31st, 2011 were noted.
- 2) Board of Selectmen Draft Minutes of September 1st, 2011 were noted.

VII. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 11:33 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant