

Motion: Mr. Nolin moved to approve the Zoning Board of Adjustment On-site Minutes of January 4, 2012, as written, seconded by Mr. Crowe, carried unanimously.

IV. Hearings

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

1. Continuation of Public Hearing - Christopher Carpenter, Trustee of the Christopher Carpenter Trust (175-13)(62 Sticks 'N' Stones Road) Appeal from an Administrative Decision

Mr. Stephens stated this was a continued hearing for Christopher Carpenter. There was no one present in the audience representing the applicant.

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on January 4th. There were no changes made to the draft decision or further discussion regarding the hearing.

Motion: Mr. Hopkins moved to authorize the Chairman to sign the Notice of Decision as written, upholding the Board of Selectmen's November 17, 2011 decision to deny applicant's request to "unmerge" two tracts of land, pursuant to RSA 674:39-aa for Christopher Carpenter, Trustee of the Christopher Carpenter Trust (175-13), seconded by Mr. Nolin, passed by a vote of five (5) in favor (Stephens, Hopkins, Nolin, Crowe, Bickford), None (0) opposed and 0 abstentions.

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

2. Continuation of Public Hearing Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Variances from Article VI, Paragraph C, (F)(2.a) & (F)(6.a,e & g)

Mr. Stephens stated that this was a continued hearing for Rock Pile Real Estate, LLC. The Hearing was continued on January 4th to allow an opportunity for the board to conduct an on-site visit of the site, which was held on January 11, 2012.

Kim and Michael Prause were present for the hearing. Ms. Prause provided the board with revised plans which were used to lay out the parking spaces as seen at the on-site visit on January 11th. Ms. Prause stated she has been in contact with the NH DOT, noting that the proposed berm will not need to be six (6) feet in width as discussed at the on-site. Board members questioned the number of seats that were being requested, noting there have been a few numbers mentioned. Ms. Prause stated for the record that she was requesting twelve seats.

Mr. Crowe questioned if the plan provided this evening was different than which was submitted with the application, as there was some confusion as to what plan the board was reviewing. Ms. Prause commented that she had brought in revised plans, which have not been stamped by a Licensed Surveyor, at the suggestion of the Town Planner.

Mr. Nolin asked if the applicant had applied to the state for a well release. Ms. Prause stated they are working with the state, but do not have all the information needed, as the abutting property is currently in foreclosure. She does not understand why the well is a concern of the ZBA. Mr. Nolin stated that as it is a Non-community well, that it is a concern of the ZBA. Mr. Nolin commented that a Non-community water system shall be kept at least 50 feet from the edge of the road right-of-ways, driveways, and parking areas. Mr. Nolin stated the proposed parking is within a 50 foot radius of the well, and if the

applicant was not able to obtain a well release, the parking would need to be relocated, and that there is no other area on the site the parking could go.

There was a lengthy discussion relating to the number of parking spaces, location of parking, access to the parking spaces and in relation to the number of seats being requested.

Mr. Woodruff referred to his staff memo, in which he recommended that the Board ask the applicant to change their application to limit seating to a maximum eight (8) until more parking can be added. For the record, Ms. Prause requested to amend her application for usage, for eight (8) seats at this time and requested that the plan submitted this evening, dated January 18, 2012, be the plan the board reviews and takes into consideration.

Mr. Hopkins questioned deliveries to the site, if and how delivery trucks would maneuver on the site. Ms. Prause commented deliveries would typically be made late in the afternoon and would not interfere with customers and parking.

Mr. Nolin referred to the Technical Review Committee Notes, DPW/Road Agent's question if the owner needs permission or easement from the Town to do what is proposed in the Town's ROW? Ms. Prause commented that the parking is located on-site and that they ROW is only to be used for passing in and out, that it is no different than any other driveway that will access and egress over a ROW along Route 109, Route 25 or 109A.

Mr. Stephens note they had received in additional letters, and it was not the practice of the board to read them into the record. One letter was from Kate Lancor, who was present and read her letter of support, and dismay with the actions of the board into the record.

Mr. Stephens gave a brief overview of the roles and responsibilities of the board, noting that they are a quasi-judicial board and must adhere to State Statues and Town Regulations. He noted that their job is not always and easy one and that the members apply the statues and regulations to each and every application presented to the board.

Mr. Stephens opens the floor for public comment.

Andy Coppinger commented that he valued the work of the board and stated that there is a five part test for the granting of a variance. He asked if the applicant met the five criteria or not? Mr. Stephens stated that was the reason for the hearing, and that the board would make that determination during a deliberative session.

Kate Lancor commented that there was a concern regarding parking and noted that there was municipal parking available down the road at the Lion's Club. It was noted that the regulations require adequate, on-site parking.

Mike Lancor refereed to the Town Planners memo regarding parking and questioned if Ms. Prause had amended her seating from 12 to 8, how did that impact parking? Mr. Woodruff commented that it got parking closer to what would be acceptable. There was a repetitive discussion as to who thought what was acceptable and what that was based upon, with Mr. Woodruff's and Ms. Pause's opinion differing.

Mr. Nolin questioned the lot coverage on the site. It was noted it is shown on the plan as 43%.

Bud Heinrich questioned the location and requirements of the septic system. Ms. Prause commented they have a state approved septic for a commercial ice cream shop, and they have applied to the state for an amended approval for the bakery.

Joanne Coppinger had several questions, first, what variances were being requested this evening, and if the variance for the number of parking spaces was needed as Ms. Prause had amended her application to eight (8) seats. It appeared the variances requested are for use, relief from the 25' buffer, side setback, size of parking spaces and parking within the setback. Ms. Coppinger noted for the record, that it has been the practice of the Planning Board to use the formula of three (3) seats per one (1) parking space. Ms. Coppinger raised a procedural question, asking if they were granted a variance and if the parking changed, did they need ZBA approval for the change.

Michelle Willey, Lee Road, noted her concern with the message that she felt was being sent to the public by the ZBA. It appears to her that they do not welcome commercial development in town.

Mr. Lancor noted his letter dated January 17th, which was sent to the board. He encouraged the board to take into consideration the Town Planners suggestion as to how they can work with Rock Pile Real Estate as there is a historical use of the property as commercial.

Nancy Wright questioned what would happen to the overflow parking. Would people park along Route 109 or 109A and how would that be addressed? It was noted that this would be an enforcement issue and there are ordinances for parking a certain distance from an intersection for safe sight distance.

Mr. Stephens noted the board had received five additional letters of correspondence from residents, three (3) opposing and two (2) in favor.

Mr. Lancor questioned if the Board had received any letter of objections filled by abutters? It was stated no, not by abutters.

Cristina Ashjian provided each member of the Board a copy of her letter dated January 18, 2012, opposing the project, and read said letter into the record.

Ms. Wright read the following language from the Zoning Ordinance "The Commercial Districts established by the Ordinance are designed to promote and protect the health, safety, convenience, order, prosperity and the general welfare of the Town of Moultonborough. They are intended to provide areas for businesses which rely on automobiles and delivery trucks in day to day operation while continuing to keep intact the "strong desires of Moultonborough residents to preserve the town's rural attributes," consistent with the goals of the Master Plan."

Ms. Prause commented that she believes that her request is for a reasonable use, and that her application meets the five part test, and that the variance process is in place as a mechanism to seek relief from the ordinance and understands that is why there is zoning.

Mr. Stephens asked if there were any further questions or comments from the public, it was noted there were none. Mr. Stephens closed the public input portion of the hearing at this time and went into deliberative session at 9:30 PM to discuss each of the criteria for the granting of the variance from Article VI, Paragraph C, Permitted Uses. They came out of deliberative session at 9:50 PM.

Ms. Prause asked if she could respond to some of the comments and concerns raised during the Boards deliberative session. She questioned if the board would clarify how any commercial business that crosses over the ROW operate? She said that you must cross over a portion of the ROW to access many businesses along Route 25. Board members felt that Ms. Pause's proposal was unique.

At this time Ms. Prause respectfully requested to withdraw all three of her applications before the board at this time.

Motion: Mr. Hopkins moved that the board accept the applicants (**Rock Pile Real Estate, LLC**) request that the project be withdrawn without prejudice, at this time from the Boards consideration, seconded by Mr. Crowe, carried unanimously.

The Board took a five minute break from 10:05 to 10:10.

3. Elizabeth & Scott Dolfi (188-30)(80 Wyman Trail)
Variance from Article III, Paragraph B(4)

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

Dan Ellis, of Ames Associates presented the application for Elizabeth and Scott Dolfi. Mr. Ellis gave a brief description of the proposal, which requires a variance from Article III, B (4) to allow for construction of a single 8.4' x 15.5' shed located 6.9' from the shoreline as measures from the eave overhang and 7.4' as measured from the corner of the structure for the parcel. Mr. Ellis noted there are two existing sheds (6.2' x 8.2' and 7.4' x 11.1') that are currently located within 4' of the shoreline and will be removed. The sheds currently serve as storage for water-based recreational items. These two sheds have an aggregate total area of 132.98 square ft, and the proposed shed is to be located 6.9' from the shoreline as measures from the eave overhang and 7.4' as measured from the corner of the structure, and is 130.2 square ft. Mr. Ellis reviewed each of the criteria for the granting of the variance, noting that the hardship is the site itself. There is a steep slope to the waterfront, and approximately twenty (20) stairs to the lake. Mr. Ellis answered any questions from the board.

Mr. Stephens questioned what would preclude the property owner from repairing the existing sheds, or constructing a new shed behind the 50' setback. Mr. Ellis stated the sheds could be rebuilt, but that they feel that removing the sheds, which are at the reference line and 4' from the reference line, and rebuilding one shed further back (6.9') was an improvement. If they were to build a shed behind the 50' setback line, it would not require a variance, and noted the topography of the lot, and the danger in carrying the water-based recreation items done the stairs to the lake.

Mr. Stephens questioned if this project required a shoreland permit, or permit by notification? Ms. Roseberry stated they have received a waiver from the NH DES for the proposed project.

Mr. Woodruff questioned what would become of the area of the existing sheds? Ms. Roseberry stated the proposal is to construct a retaining wall and allow natural vegetation to regrow in those areas.

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 10:18 PM and came out at 10:27 PM.

Motion: Mr. Crowe moved to continue the Public Hearing for **Scott & Elizabeth Dolfi (188-30)** to February 1, 2012, and to direct staff to draft a Notice of Decision granting the variance, seconded by Mr. Nolin, passed in favor by a vote of three (3) in favor (Stephens, Nolin, Crowe), two (2) opposed (Hopkins, Bickford) and 0 abstentions.

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

VI. Correspondence

1) Mr. Stephens noted a letter of resignation dated January 18, 2012, from Member Nicol Roseberry. Ms Roseberry indicated her term as a Full Board Member expires this March, and in March of 2013 her term as an Alternate Member expires. She stated the reason for her resignation was due to her work with a local land consulting company often requires her to recuse herself from the board. She stated she would be willing to continue to serve the Board through March of 2012.

2) Planning Board Draft Minutes of January 11, 2012, were noted.

VII. Unfinished Business

VII. Adjournment

Motion: Mr. Hopkins made the motion to adjourn at 10:35 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant