

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

Regular Meeting

May 16, 2012

Minutes

Present: Members: Bob Stephens, Russ Nolin, Joseph Crowe, Robert Zewski, Ken Bickford
Alternates: Jerry Hopkins, Natt King
Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

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.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of May 2, 2012, seconded by Mr. Bickford

Discussion on approval of minutes: Mr. Zewski commented that there were a number of issues that referred to a ice cream stand or shop, and that is what was actually said, but is not what was in the special exception back in 1994. He questioned if the board was approving what was actually said "stand or shop". In 1994 a request was made to amend the special exception and the phrase was "all they want is an ice cream window". Mr. Zewski questioned if the board was approving what was stated during the Public Hearing, or what was requested in 1994. Mr. Stephens stated the action before the board should be to approve what occurred or was said during the Public Hearing.

Mr. King noted on page 3, paragraph 6, Mr. Wallace was quoted as saying that "he was not opposed to the project" questioning if that was in fact what he had said. Ms. Whitney stated in reviewing the tape, Mr. Wallace actually stated "he was not opposed to the green space". This will be amended.

Mr. Nolin requested further language for clarification on page 5, paragraph 1. He would like language added to the end of the paragraph stating he felt this was contrary to the ordinance. And, on page 6, 3rd line, he said that Mr. Cahill was in favor of a bakery, not in favor of the special exception.

Mr. Stephens called for a vote on the floor to approve the minutes as amend. Motion was carried unanimously.

IV. Hearings

1. & 2. Continuation of Public Hearing - Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway) Variances from Article VI (F)(6)(e), (F)(6)(g) & E.(1) and Special Exception – Article VI Paragraph E

Mr. Stephens stated that this was a continuation for the request for variances and a special exception for Rock Pile Real Estate, LLC, Tax Map 44 Lot 13. The Board reviewed the Notice of Decision which was prepared by staff reflecting the determinations of the Board on May 2nd.

Mr. Zewski noted the board had received a handout a tonight and questioned if the only change would be the change to green space from project. Mr. Stephens stated yes, that Item 10 would be changed to reflect this amendment. Mr. Nolin questioned Item 12, in which the board had discussed during the review of their minutes, noting the need to amend Item 12 to read “Jim Cahill stated that he was in favor of a bakery, but not at this location”

Mr. King noted Item 8 in which a letter was referenced from a realtor, Mary-Ann Schmidt, who stated that in her opinion, the use would not have a negative effect on all of the values of the surrounding properties. He had been told that Ms. Schmidt was the realtor involved, and it would seem as though it would be a biased statement to be made. He commented if the board members took that information as a professional appraiser’s position on the diminution of value or non-diminution, that the board would be remiss at doing that and not getting a non-biased opinion. Mr. Stephens stated that that was not before the board. The issue before the board was did in fact Ms. Nadeau read a letter prepared by Mary-Ann Schmidt, which is a letter of record. At the time of the hearing, the board did not discuss or challenge the validity of that. Mr. Nolin commented that he had asked if Ms. Schmidt was present that evening.

Mr. Stephens stated the Notice of Decision is supposed to reflect the testimony of the hearing.

Mr. King questioned if there would be another opportunity in the hearing to go over this this evening. Mr. Stephens stated no. The purpose of the hearing this evening is strictly to review the Notice of Decision and to vote whether or not to approve the contents of the Notice of Decision and authorize the chair to sign it. Mr. King stated that this was not an open meeting then. Mr. Stephens stated that was correct. It was conducted in public. It was continued for the purpose of giving staff the opportunity to prepare the Facts of Finding, i.e. Notice of Decision, for the purpose of the board to review and concur that the information contained in the Notice of Decision representative of what occurred in this case, the May 2nd meeting, and then to pass a vote to authorize the chair to sign the decision as a reflection of the fact of the case. Mr. King questioned if that would be the same with the letter he submitted this evening from Mr. Bollinger. Mr. Stephens stated that was not a part of tonight’s hearing. Mr. King questioned if that would be a part of a request for a rehearing. Mr. Stephens stated there are recourses, and at this time the board was following procedures in the manner that they have been conducting meetings.

Mr. Crowe questioned if the board was going to take Schmidt’s letter in there regarding the values. Mr. Crowe claimed that he had not seen the letter until a few days ago. Ms. Whitney stated the board members had received the letter, and it was in their packets for the hearing. Mr. Crowe also noted that in the same letter, Ms. Schmidt noted that in her opinion the place had been abandoned. He brought this up as it appeared somewhere along the line, this may come an issue. Mr. Crowe questioned if this was an issue the board should be dealing with now or not. Mr. Stephens stated that he did not believe so. If it becomes an issue, it will become an issue at a rehearing. The board should be dealing with what occurred that night. The Notice of Decision is the facts of that meeting. The board made a split decision on what occurred that night. They asked staff to prepare a notice reflecting what occurred that night, so the board could close this chapter on this hearing. There are rights of recourse for everybody.

Mr. Stephens called for a motion to approve the Notice of Decision. Mr. Hopkins commented that the chair had not opened the hearing for the special exception. As a point of order Mr. Stephens opened the hearing for the special exception so that it may be included in the discussion of the Notice of Decision. At the hearing on May 2nd the board had requested staff prepare one Notice of Decision that would include the actions of the board on all four applications in one Notice of Decision.

Motion: Mr. Bickford moved to approve the applications for the request for variances and a special exception for **Rock Pile Real Estate, LLC (44-13)** as amended in the

Draft Notice of Decision, and to authorize the Chairman to sign the Notice of Decision, seconded by Mr. Zewski, passed by a vote of three (3) in favor (Stephens, Zewski, Bickford), two (2) opposed (Nolin, Crowe) and 0 abstentions.

Mr. Stephens noted the right of appeal clock starts from this evening's decision and any action taken prior to that time is done so at the applicant's risk.

3. John P. Mehegan & Pamela K. Geyer (242-18)(41 Cook's Point Road)
Variance from Article III B(4)

Mr. Stephens stated that this was a hearing for an application for a variance. Dave Dolan, agent, presented the application for variance, briefly describing the Lot and existing non-conforming dwelling. The proposed variance is to permit the construction of an addition consisting of a covered walkway and garage to be partially located in the lake setback, 39' from the lake, where 50' is required. Mr. Dolan stated they will be removing two non-conforming sheds and a brick walkway which are located in the lake setback. Mr. Dolan addressed the criteria for the granting of a variance, noting that 6 of the 9 surrounding homes have attached garages. Mr. Dolan stated that there is an existing small garage on the site which would need a variance from the sideline setback for any addition and it would not be practical to add on to that garage, or to connect it to the home as that section of the home is a bedroom. The proposed home is one story and the garage will be the same. Mr. Dolan answered any questions from the board.

Mr. Stephens asked why the proposed garage could not be moved closer to the road, out of the lake setback. Mr. Dolan stated that the septic was located in that location and the toe of fill for the raised system would not allow for the garage to be moved back from the lake. He also noted they would still need a variance for the covered connector.

Mr. King questioned what the square footage of proposed encroachment was versus the area to be removed from the sheds and walkway. Mr. Dolan did not have that information available on the plan. He scaled the sheds and walkways, noting the sheds were about 200 square feet and the proposed intrusion of the garage was about 150 square feet.

Mr. Stephens opened the hearing for public input. There was none noted. Mr. Stephens closed the hearing for public input at this time.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 8:00 PM and came out of deliberative session at 8:15 PM.

It was noted the need for an approved NH DES Shoreland Permit for the proposed project.

Motion: Mr. Crowe moved to direct staff to draft a Notice of Decision to grant the variance for **John P. Mehegan & Pamela K. Geyer (242-18)**, conditional upon the receipt of a NH DES approved Shoreland permit, and to continue the Hearing to June 6, 2012, seconded by Mr. Bickford, carried unanimously.

4. Eric Bernow / Troop Family LLC (41-1)(265 Sheridan Road)
Variance from Article III B(1)

Mr. Stephens stated that this was a hearing for an application for a variance. Eric Bernow presented his application for variance, briefly describing the proposed project which is to remove the existing rotten two story porch and replacing it with a single story porch that will wrap around the first floor porch. Mr. Bernow provided photos of the existing porch, with a photo of a home with a porch with similar detail in what they are trying to achieve. Mr. Bernow stated there was a small section of the wraparound porch that encroaches into the required 50' setback from the middle of the road. Mr. Bernow answered any questions from the board.

Mr. Hopkins questioned the location of the septic and leach field.

Mr. Woodruff referred to his staff memo which included a copy of a portion of a site plan for the widening of a portion of Sheridan Road and a copy of the same area taken from the GIS on line mapping. Mr. Woodruff noted an error in the edge of the right-of-way (ROW) shown on the GIS mapping, noting a jog of 7.31' that was depicted in the incorrect directions, therefore doubling the distance to 15.62'. He stated that the proposed porch met the setback from the ROW but still needed a variance from the 50' setback.

Mr. Stephens opened the hearing for public input. Cristina Ashjian stated that she admired the property and that it was an important piece of history for country estates. She gave a brief history of the property and requested from the owner that in an effort to preserve the history and documentation for the property that she be allowed to extensively photograph the house before the porch is removed. Mr. Bernow agreed to meet with Ms. Ashjian and set a mutual time to photograph the house.

Mr. Stephens closed the hearing for public input at this time.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 8:16 PM and came out of deliberative session at 8:18 PM.

There was no further input from the board or public.

Motion: Mr. Bickford moved to direct staff to draft a Notice of Decision to grant the variance for **Eric Bernow / Troop Family LLC (41-1)**, and to continue the Hearing to June 6, 2012, seconded by Mr. Nolin, carried unanimously.

V. Correspondence

- 1) Planning Board Draft Minutes of May 9, 2012, were noted
- 2) Board of Selectmen Draft Minutes of May 3, 2012, were noted.
- 3) Letter dated May 16, 2012, from Charles Bollinger was noted.

VI. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:35 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant