

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

Regular Meeting

October 3, 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. Mr. Stephens noted the voting members for this evening were Russ, Bob Z., Ken, Skip and himself.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of July 18, 2012, as written, seconded by Mr. Crowe, carried unanimously, with Mr. Stephens abstaining.

IV. Hearings

1. Wendy Castleberry Revocable Trust 2008; Wendy Castleberry, Trustee (171-3)
 (82 Alpine Park Road) Variance from Article III, B(4) (Deck)

Nicol Roseberry of Ames Associates presented the application for three of the variances for Tax Map 171 Lot 3. Mr. Stephens stated that the board would first address the application for a variance from Article III, B 4, to allow the construction of a 10.5'x 19.3' deck, resulting in 18 sq. ft. of deck surface located within 50' of the shoreline.

Ms. Roseberry briefly described the property, presenting several 11"x17" colored photos of the developed site. She noted the lot was approximately 100' in width at the lake and the road, and narrowed to 85' towards the middle of the lot. There is an existing nonconforming house located on the lot, 1.7 ± from the lake, which was built in 1965? There is an existing garage that has 153 sq. ft. of nonconformity within the side line setback, 14.3' from the property line. Ms. Roseberry noted there is a significant slope down towards the developed area from Alpine Park Road.

This application was for a request for a variance for a proposed 10.5'x 19.3' deck, resulting in 18 sq. ft. of deck surface located within 50' of the shoreline. Ms. Roseberry stated that most of the existing house is located within a setback, either the 50' shoreline buffer or the 20' side setback. Ms. Roseberry addressed each of the criteria for the granting of a variance. Ms. Roseberry answered any questions from the board.

Mr. Stephens noted that the Applicant had received a Shoreland Impact Permit from the NH DES. Board members questioned if the same plan was submitted with both applications to the Zoning Board of Adjustment and the NH DES. Ms. Roseberry stated yes and that she would provide the office with a copy of the plan submitted for approval by the NH DES

Mr. Bickford questioned if there were steps that were incorporated as part of the deck. Ms. Roseberry stated yes.

Mr. King expressed his feelings regarding the request for variances, noting that he did not feel that this request met the spirit of the ordinance, or would not be contrary to public interest and substantial justice. He noted for historical purposes that he was on the original zoning committee in the 80's that wrote the regulation and his recollection of the reason for the 50' lake setback was to protect the waters, which are our economic base. It was intended to see that all new structures were setback from the lake and that all replaces structure, other than those of casualty, were also set back from the lake.

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

Mr. Woodruff stated that he had not prepared a staff memo for the hearings this evening, but noted that he supported this request for variance for the construction of the deck.

Mr. Stephens stated the board was going to go into deliberative session, which was to allow them to formulate opinions on the criteria. There will be no input from the applicant or the public at that time. It is for discussion time, opinion time, no voting will take place during the deliberative session and alternates may participate in the deliberations. The board went into deliberative session to discuss each of the criteria for granting the variance at 7:43 PM and came out at 7:50 PM.

There was no further input from the board or public.

Motion: Mr. Bickford moved to grant the request for a variance for the Wendy Castleberry Revocable Trust 2008, Tax Map 171 Lot 3, for the construction of a 10.5'x19.3' deck, to close the public hearing, and to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, to be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting, seconded by Mr. Crowe, carried unanimously.

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

2. Wendy Castleberry Revocable Trust 2008; Wendy Castleberry, Trustee (171-3)
(82 Alpine Park Road) Variance from Article III, B(3)(Covered Entry)

Nicol Roseberry of Ames Associates presented the application for a variance from Article III, B(3) to permit the construction of a 6'x12' covered entry. She stated there was not any need to describe the location or features again on the site, noting this was the same property the board just approved the prior variance for on Tax Map 171, Lot 3.

Ms. Roseberry stated the proposed covered entry would not encroach any closer to the sideline than the existing north wall of the nonconforming house that was built in 1965. She noted the covered

entry would allow for safer access and egress to the home. Currently the slope of the driveway directs water to that area of the lot, causing the walkway and entrance to be slippery. The storm water management required as a condition of approval by the NH DES will provide for an infiltration trench along a portion of the driveway, making access and egress to the home safer. Ms. Roseberry addressed each of the criteria for the granting of a variance. Ms. Roseberry answered any questions from the board.

Board members questioned if the steps in the sideline setback, depicted on the plan, were to be considered part of the application for variance. It was noted that it has been the decision of the Code Enforcement Officer that steps made of landscaping materials were not considered structures and therefore were not a part of this application. Board members questioned if the proposed covered entry was an open entry or closed. Ms. Roseberry stated that had not been determined yet. Members discussed this and it was their decision that if they were to grant the variance for the covered entry, it would be for an open covered entry.

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

Mr. King again expressed his feelings regarding the request for variances, noting that it was not necessary and there were not any outstanding conditions that made the property unique and that it was not in the public interest or the spirit of the ordinance.

Mr. Woodruff noted that he supported this request for variance for the covered entry, with the hardship being safety. He stated the request was for a covered entry and should be noted when the applicant applies for a building permit that, if approved, was for an open covered entry.

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 8:09 PM and came out of deliberative session at 8:26 PM.

There was no further input from the board or public. Mr. Stephens noted the voting members were Russ, Bob Z., Ken, Skip and himself.

Motion: Mr. Zewski moved to grant the request for a variance for the Wendy Castleberry Revocable Trust 2008, Tax Map 171 Lot 3, for the construction of a 6'x12' covered entry, with the condition that it be an "open" covered entry and that the storm water management as outlined in the plan be constructed as proposed, and further moved to close the public hearing, and to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, to be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting, seconded by Mr. Crowe, carried unanimously.

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

3. Wendy Castleberry Revocable Trust 2008; Wendy Castleberry, Trustee (171-3) (82 Alpine Park Road) Variance from Article III B(3) (Garage)

Nicol Roseberry of Ames Associates presented the application for a variance from Article III, B(3) to permit the reconstruction of a garage located 14.3' from the sideline setback. Ms. Roseberry stated again that this was the request was for the same property as the prior two hearing on Tax Map 171,

Lot 3. Ms. Roseberry described the existing nonconforming garage, noting that it was 35.4'x24.9', 14.3' off the south property line, with 153 sq. ft. of encroachment. The proposal is to remove the existing garage and build a new 28'x30' garage that will encroach 135 sq. ft. within the sideline setback.

Ms. Roseberry addressed each of the criteria for the granting of a variance. Ms. Roseberry answered any questions from the board.

Board members questioned the location of the garage, questioning why the new garage could not be located out of the side line setback. Ms. Roseberry stated that it was for maneuverability. They have moved the garage towards the east, allowing an area beside the garage for vehicles.

Mr. Stephens questioned the height of the proposed garage, asking if there would be a second floor. Ms. Roseberry stated yes.

Board members questioned if the size of the lot was unique when compared with others in the neighborhood. It was noted that the majority of the lots in the neighborhood were larger than this one.

Mr. Woodruff commented that he agreed with only two of the applicant's facts supporting their request for variance relating to contrary to the public interest and values of surrounding properties and disagrees with the remaining three. He feels that there may be a reasonable location to place the garage. He stated that once you remove the garage there are no more grandfathering rights and it should conform.

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 8:50 PM and came out of deliberative session at 8:55 PM.

There was no further input from the board or public. Mr. Stephens noted the voting members were Russ, Bob Z., Ken, Skip and himself.

Motion: Mr. Nolin moved to deny the request for a variance from Article III B(3) for the construction of a 28'x30' garage located 14.3' from the side property line, for the Wendy Castleberry Revocable Trust 2008, Tax Map 171 Lot 3, close the public hearing and to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting, seconded by Mr. Crowe, carried unanimously.

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

The Board took a five minute break from 8:57-9:02 PM.

4. Westwood Shore Drive Realty Trust; Laurie & Douglas Whitley, Trustees (112-53)
(111 Coe Point Road) Variance from Article III B(4)

Nicol Roseberry of Ames Associates presented the application for a variance from Article III, B(4) to permit the reconstruction of a residence within 50' of the shoreline of Lake Kanasatka. Ms. Roseberry provided enlarged plans of the area to be redeveloped. This plan showed the existing residence

with a screen porch and deck. The deck at its closest point to the shoreline is 4.8', the closest point of the screen porch to the shoreline is 5.8'. She went on to briefly describe the site and the existing building. The existing property is well wooded and the land rises to the back and each side of the existing building. The building was built in the 40's and was placed in its current location because of the view, which has continued to be a valuable asset of the property.

Ms. Roseberry went onto explain the location and configuration of the existing house and driveway. The proposal is to relocate the driveway and remove the existing house and reconstruct in substantially the same footprint. It has been shifted back a foot and there is a slight increase in depth in one area, but a reduction in another area. The areas of the house have been slightly modified, but substantially the same footprint. They are proposing an attached garage, with storage area above, which will meet all of the setbacks. The reason they have requested the variance is due to the age of the structure, they had been discussing trying to maintain the grandfathered status with the structure as it is, utilizing walls and floors. This option was not reasonable from a construction and financial aspect. Therefore they have proposed to rebuild the house and try to maintain, as much as possible, the same configuration and location. Ms. Roseberry provided the board with several 11x17 color photos taken from various locations on the site. The members had not been to the site.

Board members questioned if the proposal requires NH DES approval. Ms. Roseberry stated that it will require NH DES approval, which they have not applied for at this time. They have chosen to apply for the town approvals first. The applicant noted that they do not have an architectural plan for the house at this time. They have been working on the footprint first. Mr. King questioned if they were required to obtain the DES approval first so that the board would have any storm water management plan to view. It was noted that it is the option of the applicant if they choose to go before the ZBA first. If the ZBA were to approve the variance, they may place conditions on the approval requiring NH DES approval.

Mr. King questioned if an onsite visit of this property would be appropriate. Board members were in agreement that an onsite visit for this site would be helpful.

Motion: Mr. Stephens moved to schedule an onsite visit for 111 Coe Point Road, Tax Map 112 Lot 53 for Monday, October 15, 2012 at 4 PM, seconded by Mr. Crowe, carried unanimously.

Mr. Woodruff questioned if a new house could be located within the building envelope. A few Board members felt that there was a large asset for the placement of the house in the existing location.

Motion: Mr. Stephens moved to continue the Public Hearing for the Westwood Shore Drive Realty Trust, Tax Map 112 Lot 53 to October 17, 2012, seconded by Mr. Crowe, carried unanimously.

V. Correspondence

1) Mr. Stephens stated that the LCG was holding a fall workshop on Saturday, October 27, 2012 and all were encouraged to attend. Those wishing to attend should contact Mr. Woodruff.

2) Planning Board Draft Minutes of July 25th, August 8th, 22nd, 29th and September 12th 2012, were noted.

3) Board of Selectmen Draft Minutes of July 19th, 26th, August 2nd, 16th, 23rd, 30th, September 6th, 20th and 27th, were noted.

VI. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:46 PM, seconded by Mr. Bickford, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant