

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

Regular Meeting

February 6, 2013

Minutes

Present: Members: Bob Stephens, Joseph Crowe, Ken Bickford
 Alternates: Jerry Hopkins, Natt King
Excused: Members: Russ Nolin, Robert Zewski
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 appointed Jerry Hopkins and Natt King to sit on the board with full voting privileges in place of excused members Russ Nolin and Robert Zewski.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of December 19, 2012, as written, seconded by Mr. Crowe, carried unanimously.

IV. Hearings

1. Paul and Cynthia Smith (114-29)(Red Hill Road)
 Variance from Article VI, Table of Uses

Mr. Stephens stated that this was an application for a variance asking for relief from Article VI, Table C of the Zoning Ordinance.

Attorney Jeremy Eggleton, agent for the applicants presented the application for the variance.

Mr. Eggleton stated that he had prepared a power point presentation for this evening with handouts. He was unable to get the projector to work, so the board followed along with the handouts provided. Mr. Eggleton briefly described the location of the Smith's property in relation to Red Hill Road and Bishop Shore Road. He went on to give the history of the Smith property and surrounding properties and how the boats came about on the property and how they arrived at this point. There was a complaint filed with the Code Enforcement Officer (CEO). Mr. Smith agreed to remove the boats. Mr. Eggleton spoke with the Planner in January, and as a result filed for the variance. Mr. Eggleton stated that the storing of boats, gratuitous, for a few friends, neighbors and relations is not a commercial activity. He stated that this was private property and there is no money exchanged for storage space. They would like to store a reasonable number of boats, trailers and equipment on their property. It is not going to turn into a commercial activity. Mr. Eggleton believes they could challenge the interpretation of the Zoning Ordinance, if they could store something on their property gratuitous.

Mr. Stephens stated that this was an application for a variance and that the Zoning Board of Adjustment does not interpret the Zoning Ordinance, but provide relief in cases like these. The CEO made the determination and there was an opportunity to appeal that decision, but that time period has gone by.

Mr. Eggleton went on to address each of the criteria for the granting of a variance. The reasons were noted as bullet points in each of the pages of the handout (see attached). Mr. Eggleton pointed out several properties in town that appeared to be non-compliant. The argument in support of the variance listed restriction to the number of boats and trailers. He noted that there is a natural buffer area along the road. He went on to comment that the Joyce property across the street operated a horse stable and Mr. Joyce is a stone mason and stores heavy equipment and trailers on his property, with cars and traffic coming and going on a regular basis. The storage of the boats on the Smith property will be insignificant.

The last criterion relating to unnecessary hardship was discussed at length. Mr. Eggleton stated many times throughout his presentation that they proposal was for the storage of 1-6 boats and 1-3 trailers, which they believe was limited and reasonable for a 9.1 acre parcel. The limitation being storage would be for friends, family and neighbors.

Mr. Smith commented that he owns the parcel, which is 9.1 acres, large enough to protect themselves and abutter's from development of the lot.

There was a discussion of the lot being vacant, and if the proposed use was or was not an accessory use of the property. Mr. Eggleton stated that Mr. & Mrs. Smith have intentions on building a home on the property and had brought building plans with them this evening.

Mr. Stephens opened the hearing for public input. Abutter Kirk Meloney commented that he was not for or against the application, he simply had some concerns and questions. He commented that when the boats are stored, the leaves are off the trees and you can see them, but they are not in your face, not anything unlike what you see all around the presiding area. People have things in their yards that are visible. One of Mr. Meloney's concerns was the liability on the property, such as a fire. The second concern is the number of boats proposed. It was stated 1-6 boats and 1-3 trailers. That would be fine, if that was what Mr. Smith owned. He would like to be assured that those numbers are where it would stay and be adhered to. How can he be assured that it will stay at 6, and doesn't go to 8, to 12, or 16? And if it does, what's the process then, if that kind of growth occurs. Mr. Stephens commented that the ZBA can place limitations and restrictions on the variance, which would be contained in a Notice of Decision, which is recorded at the registry of deeds. In regards to enforcement, that would go through the CEO.

Abutter Dee Danahy, questioned, rather than forcing Mr. Smith to apply for a variance, why couldn't the ZBA give him a special exception to keep doing what he has been doing? Mr. Stephens stated no. There are rules and ordinances in place to seek relief, with procedures set by statute that the ZBA must follow in order to grant relief from an existing ordinance. Ms. Dahany questioned if this would be the first commercial enterprise on Red Hill Road. Mr. Stephens stated to the best of his knowledge that was so. Mr. Eggleton has referred to the riding stable on the abutting property, which is an allowable use in the district as it is classified as an agricultural activity.

Jane Fairchild, Bishop Shore Road had provided the board with a letter earlier in the day, which has a few misunderstandings in it, as she had realized that her Printer did not print the entire Smith application. She pointed out that Mr. Eggleton only talked about half of what the purpose of the Zoning Ordinance is. He mentioned the part that says it's to take into account the impacts of land uses and to impose limitations on uses of land for the protection of the environment, the natural resources and the rural qualities of Moultonborough. What he failed to mention in that same paragraph under the

“Statement of Purpose”, is the ordinance is also intended to minimize the impact of potentially incompatible uses with particular consideration given to the character of the area. She stated that was one of her big concerns with the proposal. The number of boats is not definitive. She is not clear about that. They have requested 6 boats, which is separate from the unlimited number of boats, trailers, snowmobiles, equipment that the family wants to store. Ms. Fairchild urged the board to place limitations on the variance if the board voted to grant it. Ms. Fairchild noted another concern was that Mr. Smith is in the building construction trade and that there were a lot of questions that are unanswered, such as the type of materials and equipment that may be stored.

There was a question asked if the ZBA were to grant the variance, would this in fact be adding another category (storage) to the table of permitted uses. Mr. Woodruff explained the table of uses in the zoning ordinance. Noting that the uses listed in the table were either permitted, not permitted, or allowed by special exception in each of the zones shown in the table. If a use is not listed, then you would need a variance for such use. This is why the Smiths are before the board this evening.

Members questioned if the variance were to be granted, and the Smiths sold the property, what method would a future owner need to expand? Mr. Woodruff stated that at this stage the Smiths will still need to go before the Planning Board (PB) for site plan review. To expand, subsequent owners would need to go before both the ZBA and PB for approvals.

Nancy Wright questioned what the difference was between the Lakes Region Water Co., on Route 109 and the Smith property. The water company property is an eyesore. They keep all sorts of trailers and equipment there. Mr. Woodruff stated that Ms. Wright should contact the CEO regarding any questions or complaints she might have on a particular property.

Board member Crowe asked if Mr. Eggleton would define trailer in the application. Mr. Eggleton stated a snowmobile trailer. Mr. Crowe commented that it could refer to a 53' box. His other concern was containment. A portion of the lot is located in an aquifer area and he is concerned about contamination from fuels or oils from the boats.

Mr. King stated that he was concerned with future or new owners who may expand. He noted that in the past the board has denied two requests for a variance for boat storage. Mr. King requested an onsite visit of the site. Board members were mixed on the need for an onsite visit for this site. A few members noted that they had already driven past the site.

Mr. Woodruff reviewed his staff memo with the board, reading portions of it into the record. He stated that he did not support the request and his reasoning is contained within the memo. He suggested the following conditions should the board grant the request: 1. Require the applicant to obtain site review approval from the Planning Board; 2. Set an upper limit of boats that may be stored on this property; 3. Require effective fencing or vegetative screening at least 7 ft. in height from abutters; 4. Require an area defined in size and location for the storage. In addition to the four (4) listed in the memo, he added an additional suggested condition, 5. The variance and site plan approvals become void at such time as the property is developed as a residential principal use (single family) dwelling.

Mr. Bickford noted he had several concerns such as fire, size of boats (questioning how you would enforce the size of boats), gas and/or oil leaks, vandalism (would this then lead to lighting of the site?), vegetative buffer, in the winter there is no buffer as the trees are deciduous.

There were no additional comments or questions at this time.

Mr. Stephens noted that there had been a request made for an onsite visit.

Motion: Mr. King moved to schedule an onsite visit, seconded by Mr. Crowe, carried unanimously.

Members then discussed the upcoming weather and possible dates that they could conduct the onsite visit prior snow.

Motion: Mr. Stephens moved to continue the Public Hearing for Paul & Cynthia Smith, Tax Map 114 Lot 29 to February 20, 2013, and to schedule an onsite visit for Friday, February 8, 2013, at 8 AM, seconded by Mr. Hopkins, carried unanimously.

V. Correspondence

VI. Unfinished Business

VII. Adjournment

Motion: Mr. King made the motion to adjourn at 8:55 PM, seconded by Mr. Hopkins, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant