

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

**Regular Meeting**

**February 20, 2013**

**Minutes**

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

**II.      Pledge of Allegiance**

**III.     Approval of Minutes**

**Motion:**        Mr. Crowe moved to approve the Zoning Board of Adjustment Minutes of February 6, 2013, as written, seconded by Mr. King, carried unanimously.

**Motion:**        Mr. Crowe moved to approve the Zoning Board of Adjustment On-site Minutes of February 8, 2013, as written, seconded by Mr. Bickford, carried unanimously with Mr. King and Mr. Nolin abstaining.

**IV.     Hearings**

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

Mr. Stephens stated that this was a continued hearing for a Variance from Article VI, C for Paul and Cynthia Smith to allow for the commercial operation (non-residential use) of storing boats and personal equipment belonging to them and potentially others on their vacant parcel.

The public hearing was opened at the meeting on February 6<sup>th</sup> and continued to this evening to allow the board to conduct an on-site visit of the property. The board met on-site on Friday, February 8<sup>th</sup>. The board viewed the property and there were no decisions made at that time.

Attorney Jeremy Eggleton, agent for the applicants, was present this evening noting that he had no additional information to provide to the board at this time and asked that he could reserve the opportunity to comment in case there was additional input from the public.

Mr. Stephens opened the hearing for board input at this time. Mr. Crowe questioned where the boats were now. Mr. Eggleton stated that two of the neighbors boats have been moved back to their

property, the others were removed by Mr. Eggleton's brother-in-law, but he doesn't know where to. The only boat that remains is that of Paul and Cindy Smith.

Mr. Stephens opened the hearing for public input. Abutter Mark Movsesian commented that he wasn't able to attend the first hearing, apologizing for that, and had a few comments and questions. Mr. Movsesian stated the application was written vaguely, and asked if this was a request to run a commercial operation to store boats, or personal boats and neighbor's boats on Bishop Shore Road only? He asked if it was a commercial operation as shrink wrapping has been done on the property, there have been 8-10 boats there for the past three years, and they have been growing in numbers. Mr. Movsesian asked if there were a certain number of boats that could be stored. As an abutter he can hear the blowers for the shrink wrapping and see the boats in the field from his property. Mr. Eggleton stated he had addressed this at the prior hearing, but noted the point was not to run a commercial operation. The boats Mr. Movsesian referred to were boats that were being housed there as a favor to his brother-in-law and his Uncle (Mr. Smith) did not take in any money for those. Mr. Eggleton commented that if there is a concern with third party boats on the property, the ZBA could address with the issuance of a variance.

Mr. Stephens commented that the Board was not looking as to whether or not there is compensation being exchanged, but dealing with the fact that the Code Enforcement Officer (CEO) has deemed that the number of boats being placed on this property is outside of what would be usual and customary for a residence. Therefore, he has classified it as a commercial like operation.

Mr. Movsesian followed up with a comment that it is Mr. Smith's nephew that is placing the boats on the property and not himself. There is a sign out on the abutting property at 200 Red Hill Road, who is running the business on Mr. Smith's property, it is a second party, taking a third parties boat to be stored on Mr. Smith's property.

Mr. Nolin asked for clarification, stating as there is no residence on the property, is the accessory use moot? Mr. Woodruff stated that the accessory use is a moot point since there is no real principal use on the lot. The CEO violation was mitigated by the owner, who was advised if he wanted to continue, that he would need to seek relief from the ZBA. Mr. Eggleton had provided some case law which talks to the fact if you own another lot with your residence abutting then you could reasonably, with certain circumstances, use the other lot to do accessory things that's incidental and customary to that residential use. What they are proposing does go beyond that so they need the variance relief from the ZBA. Mr. Stephens stated the only thing the board was dealing with this evening was the commercial utilization for boat storage, whether it is one or ten. Mr. Woodruff stated the storage of boats is not on the list of allowable uses in the Zoning Ordinance, it is not allowed in any zone. If the ZBA denied the variance, Mr. Smith could put three boats on the lot tomorrow, customary and incidental as an accessory use, if there was a residential principal use on the property, which is per the CEO's determination of what is the upper limit of reasonableness for someone to store on their own property.

Mr. King questioned what type of winterization and spring commissioning will take place on the property. Mr. Eggleton stated as a practice you don't store fluids with the boats, no gas, they are drained of their internal fluids beforehand. Mr. Eggleton stated that this was going forward, he could not speak to what was done previously He was hesitant to characterize shrink wrapping generally as a commercial use. He stated that people shrink wrap boats all the time. If Mr. Smith wanted to shrink wrap his boat, or the boat of a neighbor and put it in his yard, he wouldn't think that would fall a foul of the three boat limitation on residential usage. In terms of preparations they are probably already doing the stuff that would not be of concern. Certainly if those were spelled out in any kind of variance they wouldn't object to that.

Abutter Mike Joyce stated that he lives directly across the street from the lot. He commented that in the spring of 2012 there was a truck, G & L Contracting, LLC, with two employees hooked up to a boat. Mr. Joyce noted his concerns to Mr. Smith with visibility and permits, and he set his mind at ease at

that time. The next year the boats returned, with a commercial operation of shrink wrapping, using compressors, generators, gasoline and winterizing. Mr. Joyce looked up G & L Contracting with the State, and Mr. Eggleton is listed as the agent, Griffin & Learn is located in Laconia. So there is an out of town contractor using a part time resident's lot.

Mr. Eggleton stated he was the registered agent. Kevin, his brother-in-law, asked if he could register the company.

Mr. Woodruff had provided board with supplemental material from the NH DES regarding to Guidelines from Marinas and Best Management Practices for New Hampshire Marianas. He noted the staff memo he had prepared and that his recommendation continued to be one of not supporting the request as he did not feel that there is any valid hardship argument that meets the test. If the board were to grant the variance he recommended six conditions being placed on the approval. Four were contained in the memo, the fifth added at the prior meeting and one more added this evening. They were: 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 no matter who owns them; 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; 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; 6. Follow and certify annually compliance with Best Management Practices for the storage of boats.

Mr. Joyce read two letters into the record and provided them for the file. One from Ashley Mann, 38 Forty Acre Field Road and another from Bruce Van Fleet, trustee, Lake Kanasatka Realty Trust.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. He stated that the board was going 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, and no voting will take place during this time. The board went into deliberative session to discuss each of the criteria for the granting of the variance at 7:59 PM and came out at 8:12 PM.

There was no further input from the board or public. The voting members were Bob S., Russ, Joe, Ken and Natt.

**Motion:** Mr. King moved to deny the request for a variance from Article VI, C for Paul and Cynthia Smith, Tax Map 114 Lot 29, to allow for the commercial operation (non-residential use) of storing boats and personal equipment belonging to them and potentially others on their vacant parcel, 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. Bickford, motion passed unanimously, five (5) in favor (Stephens, Nolin, Bickford, Crowe, King) and none (0) opposed.

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

## V. Correspondence

## VI. Unfinished Business

Mr. Nolin commented that the Board had at one time discussed briefly the subject of applications being able to be withdrawn with or without prejudice. He had asked if there was language that could be added

to the policy and procedures regarding this. Mr. Woodruff noted that an applicant can request that their application be withdrawn, but they should state whether they are requesting that it is with or without prejudice. The decision to grant that request doesn't lie with the applicant. The board should take a vote as to whether they should accept the request to withdraw or to proceed forward with making a decision on the application. Mr. Woodruff will provide draft language for the board's review.

**VII. Adjournment**

**Motion:** Mr. Bickford made the motion to adjourn at 8:31 PM, seconded by Mr. King, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant