

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

Regular Meeting

May 15, 2013

Minutes

Present: Members: Bob Stephens, Russ Nolin, Robert Zewski, Ken Bickford, Joseph Crowe
 Alternates: Jerry Hopkins, Natt King
Excused: Member:
Staff Present: Town Planner, Bruce W. Woodruff; Office Secretary, Alison Kepple

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 1, 2013, as written, seconded by Mr. Bickford, carried unanimously.

IV. Hearings

1. Richard Madison (99-196)(15 Myrtle Drive)
Equitable Waiver of Dimensional Requirements

Mr. Stephens stated that this was an application for an Equitable Waiver of Dimensional Requirements. The applicants name is Richard Madison. The property location is 15 Myrtle Drive, Tax Map 99 Lot 196. This is a waiver for dimensional requirements of the 20 ft. side setback under Article IIIB (3). The chair asked if there was someone here to present this application.

Mr. Richard Madison, Applicant, presented the application for an Equitable Waiver. He stated that he had built a full basement foundation and put up the house which is all framed, sheathed, and the plumbing, heating system is in. The interior is not finished. He stated that he bought the property from the town in 1994. The deed does not include the dimensions however it did say it had 55' frontage along the Channel. He obtained a building permit in 2008 to put the foundation in. The sketch on the building permit was done by his builder and Mr. Madison thought he knew where the property lines were. He stated that the plan at the Registry of Deeds shows that he has 55' at the shore, consistent with the deed, but he noted that there were some discrepancies. In 2009, the abutter had their property surveyed. Mr. Madison obtained a copy of survey done by Associated Surveyors from the Code Officer in late 2012. Presumably Harry Wood did that survey, but it's not signed or sealed. He stated that had the abutter approached them in 2009 when there was only a foundation, he would have handled it at that time, but they didn't do that. He stated that the abutter waited three years, after the house was framed, all windows and doors in to say anything to him. Mr. Madison stated that if you look at the survey plan that the Registry of Deeds has, it is consistent with the dimension on the Town map that he has showing 55', but on the Associated Surveyors worksheet it doesn't project out to the water. There is 34' missing, meaning that his lot is larger than what is recorded at the registry of deeds. Mr. Madison stated that he measured from the water and set the foundation back 87 ft. further back than he needed

to because he didn't want to block the deck of the abutter to his left. He stated that in good faith he measured from the water but the surveyor measured from the street. He stated that if you look at how much they are off it's about 24" and you measure the whole area it's approximately 20 sq. ft. of the encroachment area. He also noted that if you look at the sketch that the Eklund building is closer at 17' from the set back.

Mr. Madison then went over the requirements for an equitable waiver. He stated that the problem is not 10 years old, it was not discovered until the home was substantially completed and was not done in bad faith. Had they known when only the foundation was in, he might have been able to adjust it without it costing a fortune. He stated that it was an honest mistake on his measurements. He believes that this does not hurt anyone. He stated that if they have to tear down the structure and move it 2' it would not change the view from the Eklund property more than an inch or two looking at the channel. He also stated that because the building is closer than the 20' set back, which is very common in this area, he believes his small encroachment doesn't cause a nuisance or hurt anybody's values. Mr. Madison stated that the cost of tearing down, rebuilding the foundation and rebuilding the house would be over \$200,000. The only things that they could save would be the windows and doors.

Mrs. Linda Madison stated that in good faith if they had known that Mrs. Eklund had an issue with the house when she had her lot surveyed in 2009. If she had spoken to them they could have made adjustments before the house was built, this whole situation could have been avoided.

Mr. Madison stated that it's not the whole foundation that is off. In fact, half way to the back is 21 ft., so it's just part of the foundation.

Mr. Stephens said that before he allows the board to ask questions he'd like to hear what Mr. Woodruff's investigation and reviews has determined and what facts he's uncovered.

Mr. Woodruff stated that an equitable waiver is to correct a mistake, if this is what the board finds, and the way you do that is by looking at the two eligibility criteria, the Board answers those first, if those are met in the Board's mind, then you may move forward with the other criteria.

Mr. Woodruff stated that because this building goes out of the building envelope 1.6 ft., it is not possible to correct the setbacks on the two properties because the adjacent structure on the abutter's property is 17.3' from the lot line. So you can't adjust that boundary line to make it so everything is 20' ft. and conforming. He stated that there is a timeline to this that is pretty important. In March of 2008, the Madison's applied for a foundation permit. That was completed in the first few months of spring of that year. The permit had a sketch on it that indicated that the setbacks on all four corners would be met. On May 30, 2008 the abutters wrote Mr. Cahoon a letter stating that they contend that the structure is not in the legal setback, but they didn't provide any surveyed proof of that. On June 5, 2008, Mr. Cahoon answered by sending a letter saying that he received their letter of May 30 in reference to the property next to them on Myrtle Drive, that if they feel the abutting property is in violation of the setbacks that they need to prove through a survey what setback is being violated and by how much. Until this office has that proof, the Town cannot stop work on this property or request any removal of a foundation. Mr. Woodruff stated that a year later in 2009, the abutters did commission a surveyor by Harry Wood, III and Mr. Wood wrote the abutters a letter dated June 15, 2009 that said that he could locate the common lot line between lots 196 and 197 and what he found was that Mr. Madison's foundation is 18.4' from the common property line, the corner he is talking about is closest to the abutter and the water. The other corners meet the 20' setback. Mr. Wood's letter also stated that the abutter's deck at the closest point is 17.36' from the same line. Mr. Wood that stated in his letter that the abutter had several choices in regards to the concern over the setback. 1. File a complaint with the Town. 2.) File a court action 3.) Do nothing; and please be aware that you are also too close to the same line with your stairs and deck. Mr. Woodruff stated that then the abutters sent another letter to Mr. Cahoon in 2012 stating that they had proof that the structure was outside the building envelope. However in the meantime between 2009 and the time when the letter was sent to Mr. Cahoon, Mr. Cahoon not knowing, not having proof, issued a building permit on June 29, 2012. Mr. Woodruff stated that on September 28, 2012 Mr. Cahoon sent a letter to Mr. Madison stating that he was recently

contacted by his neighbor with allegations about some violations on his property. In that letter Mr. Cahoon stated that their neighbor has a survey that proves that the house does not meet the setback and if this is the case Mr. Madison will need to seek relief from the required setback of 20' with the Moultonborough Zoning Board or remove the building to comply with the required 20' setbacks. On October 30, 2012, Mr. Cahoon sent a letter to Mr. Madison saying that he had now received a copy of the survey that was done and that it does show your building being setback to be 18.4' from the property line on the right lake corner bordering the Eklund property. He stated that the issue will need to be resolved before a C.O. can be issued on the house. He stated that there were three options as this time; a variance, a waiver of dimensional requirements or move the building into compliance. Because the neighbor's setback is not compliant it is not possible to adjust the property line to fix the problem. He goes on to state that when the original building permit was issued, it was recommended by this office that Mr. Madison survey the property before building on the foundation due to the tight constraints of the property.

Mr. Woodruff stated that he would leave it up to Mr. Madison to say when construction on the house was substantially complete within this timeline.

Mr. Woodruff stated that the septic design was approved in 2007 and has now expired because no work has been done yet and will need to be renewed. The design shows how the house was supposed to be laid out. Mr. Woodruff passed a copy of that around to the board. He also had pictures that show the view between the two structures. Mr. Woodruff stated that he received a letter today from a neighbor, not a direct abutter he believes, from a Mr. Joseph Gerrior explaining how he feels and that the letter will go on the record. Finally, Mr. Woodruff stated that the staff recommendation is that the board consider all the facts and that they consider approving the equitable waiver, however with a condition. The condition would be that the portion of the deck be removed so that it is in compliance with the 20 ft. side setback, because the deck was constructed when the applicant knew that the corner of the foundation was out of compliance. The deck therefore cannot be part of the equitable waiver.

Mr. Stephens asked the board members if they any questions.

Mr. Crowe asked Mr. Madison if he had the property surveyed before he laid out the foundation. Mr. Madison stated, no he did not have the property surveyed. Mr. Crowe then asked if anyone working on the foundation cautioned him about the position of the foundation. Mr. Madison said no.

Mr. Woodruff stated that the mistake that the applicant made was measuring from the water side not the road side because a surveyor uses tie courses because water courses change over time.

Mr. Bickford asked how we know that the other side of the lot is conforming. Mr. Madison stated that the sketch shows that is it at 22 ft. Mr. Bickford said that he doesn't see that on the site plan.

Mr. Stephens asked if there is an official survey of the lot line on the other side. Mr. Nolin stated that we don't know where anything is and that's it's a guess. Mr. Madison stated that he's just going by what the sketch shows. Mr. Woodruff pointed out that the survey was done by Harry Wood III for Associated Surveyors and although the plan submitted doesn't have a stamp, the accompanying letter indicates it was a valid survey.

Mr. King requested a site walk because he hasn't been down there to view the properties.

Mr. Crowe asked Mr. Madison when he started construction of the building. Mr. Madison stated that it was within a month of getting the permit on June 29, 2012.

Mr. Stephens opened the hearing for public input.

Ms. Eklund's daughter and her husband Bill stated that Ms. Eklund couldn't attend tonight's meeting, so that they are requesting a one month continuance so that she may attend at a later date. He stated that the

one week notice wasn't enough so she couldn't represent herself. He also stated that he knows of two other abutters that could not make the meeting tonight.

Mr. Stephens responded saying that statutorily that there's a legal commitment that the town is bound to in terms of notification. Mr. Stephens asked Mr. Woodruff if an abutter can make a request for a continuance. Mr. Woodruff stated that his feeling is that it's a legitimate request and the Board could accept the request, consider it and then decide one way or the other.

There was a brief conversation about who is considered an abutter and who gets notifications. This question was brought up by Mr. Nelson Dion who was representing Mr. Gerrior in his absence.

Mr. Crowe then stated that since Mr. King would like to do a site walk that they would have to continue this hearing which would give the other abutters a chance to attend. There was a brief discussion on this.

Mr. Stephens stated to the applicant that there is a motion on the floor to table the application and to continue the public hearing to June 5th, with a site visit on May 18th at 8:00a.m. He asked if it was okay for the board to go onto his property, and Mr. Madison stated yes.

Mr. Nolin asked Mr. Woodruff for copies of all the correspondence involved with this and a time line of dates. Mr. Woodruff stated that he could do that.

Motion: Mr. Stephens moved to table the application and to continue the public hearing until June 5, 2013, with a site visit on Saturday, May 18, 2013 at 8:00 a.m., seconded by Mr. Bickford, carried unanimously.

V. Correspondence

VI. Unfinished Business

Mr. Stephens stated that the board needs to review the notice of decision language from their previous meeting for Nica-Lee Realty Trust Map 44 Lot 33.

Motion: Mr. Bickford moved to authorize the Chairman to sign the Notice of Decision for **Nica-Lee Realty Trust, Map 44 Lot 33** dated May 2, 2013. He also directed the staff to mail said notice to the applicant or the applicant agent, seconded by Mr. Zewski carried unanimously with Mr. Crowe abstaining.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:32 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Alison G. Kepple
Office Secretary