

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

Regular Meeting

July 17, 2013

Minutes

Present: Members: Bob Stephens, Russ Nolin, Robert Zewski, Joseph Crowe, Ken Bickford
Excused: Alternate: Natt King
Absent: Alternate: Jerry Hopkins
Staff Present: Town Planner, Bruce Woodruff; Office Secretary, Alison G. 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. Nolin moved to approve the Zoning Board of Adjustment Minutes of June 19, 2013, as written, seconded by Mr. Zewski, carried unanimously.

IV. Hearings

1. James Coleman (176-20)(Shaker Jerry Road)
 Variance to Article III.1 and F(1)

Mr. Stephens stated that this hearing was published to be on tonight's agenda so the applicant has requested to withdraw his request on 7/8/13 and that the board needs to take action to motion to accept that request.

Motion: Mr. Nolin moved to accept **James Colman Tax Map 176 Lot 20** withdrawal and application, seconded by Mr. Bickford, carried unanimously.

2. Frances Eklund (99-197) (19 Myrtle Drive)
 Variance to Article III.B.3

Mr. Stephens stated that this was a hearing for an application for a variance. They are requesting a regress from the house within the 20' set back. Mr. Stephens asked if there was someone here to represent the application.

Ms. Frances Eklund stated that she was there and Mr. Stephens asked her to explain what it is that she is looking for. Ms. Eklund stated that she is looking to get a waiver from the 20' setback. She stated that she has the egress and that it's a safety egress to get out of the building. Mr. Stephens asked if that was all she wanted to tell the board. Mr. Francis Lavigne stated that the stairs have been in place for 10 years. When Ms. Eklund's husband (who has since passed away) got the permit for the deck Ms. Eklund assumed that the stairs were part of the permit at the time. She wasn't aware that the stairs

would be a separate permit. Mr. Lavigne stated that it was only discovered when they did a survey on their land.

Mr. Stephens asked if there were any questions from the board. Mr. Crowe asked if the permit was for a dock or a deck. Ms. Eklund stated that it was for the deck, not a dock like Mr. Lavigne stated. Mr. Lavigne stated that it's actually for the stairs only not the deck itself.

Mr. Stephens stated since there were no more questions from the board he asked Mr. Woodruff to give thoughts and also had a question. Mr. Stephens said that there was an indication that this was done quite some time ago, is that what his research has indicated. Mr. Woodruff stated that yes that was what he found. Mr. Stephens then asked why we weren't doing an equitable waiver as opposed to a variance. Mr. Woodruff stated that it is a variance request because a permit was never pulled for the stairs. So it's the deck stairs and the landing that violate the 20' setback for construction. Mr. Woodruff read part of his staff memo. Mr. Woodruff recommended that the board approve the request for relief from the 20 ft. side setback in the amount of 3 ft. just to be safe.

Mr. Stephens asked if anyone in the public had any questions, there were none.

Mr. Stephens asked the board if they had any questions, there were none.

Mr. Stephens stated the board was going into deliberative session at 7:41 PM to discuss each of the criteria for granting the variance. The board came out of deliberative session at 7:47 PM. There being no further input from the board or the public Mr. Stephens asked for a motion.

Motion: Mr. Zewski moved to grant variance for **Frances Eklund (99-197)**, for relief from Article III B.3 and to close the public hearing and directs the 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, he would also add that the board changed the request from 2.64 ft. to 3 ft., seconded by Mr. Bickford, motion passed, five (5) in favor (Nolin, Zewski, Crowe, Bickford, Stephens) and none (0) opposed.

Mr. Stephens noted the 30 day right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

V. Correspondence

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 20, 2013 approval of a variance – Setback for **Bears Nest Trail, LLC (64-5) (Bears Nest Trail)**.

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on June 20th. There were no changes made to the draft or further discussion on the Notice of Decision.

Motion: Mr. Bickford moved to direct the Chairman to sign the Notice of Decision as written, for **Bears Nest Trail, LLC (64-5) (Bears Nest Trail)** and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, passed by a vote of five (5) in favor (Stephens, Nolin, Crowe, Zewski, Bickford), no (0) opposed and no (0) abstentions.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 20, 2013 approval of a variance – Maximum Buildable Slopes for Bears Nest Trail, LLC (64-5) (Bears Nest Trail).

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on June 20th. There were no changes made to the draft or further discussion on the Notice of Decision.

Motion: Mr. Bickford moved to direct the Chairman to sign the Notice of Decision as written, for **Bears Nest Trail, LLC (64-5) (Bears Nest Trail)** and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, passed by a vote of four (4) in favor (Stephens, Crowe, Zewski, Bickford), one (1) opposed (Nolin) and no (0) abstentions.

3. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 20, 2013 approval of a variance for NH Route 25 Storage Realty Trust (141-8) (61 Whittier Highway)

Mr. Stephens and Mr. Bickford stepped down for this review.

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on June 20th. There were no changes made to the draft or further discussion on the Notice of Decision.

Motion: Mr. Zewski moved to direct the Chairman to sign the Notice of Decision as written, for **NH Route 25 Storage Realty Trust (141-8) (61 Whittier Highway)** and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Crowe, passed by a vote of four (4) in favor (Crowe, Zewski, Nolin, King), no (0) opposed and no (0) abstentions.

4. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 20, 2013 approval of a variance for James Morris & Deborah dePeyster (61-2) (518 High Haith Road).

The board reviewed the Draft Notice of Decision prepared by staff, as directed by the board at the hearing on June 20th. There were no changes made to the draft or further discussion on the Notice of Decision.

Motion: Mr. Zewski moved to direct the Chairman to sign the Notice of Decision as written, for **James Morris & Deborah dePeyster (61-2) (518 High Haith Road)** and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Nolin, passed by a vote of three (3) in favor (Nolin, Crowe, Zewski), no (0) opposed and no (2) abstentions (Stephens, Bickford).

VI. Unfinished Business

Mr. Crowe requested clarification regarding what took place at the meeting of June 19th. He noted that the Planner had indicated that he had received some phone calls, and thought that in a statement he made prior to the opening of the hearings, the Planner had said he had received a number of phone calls that week regarding... and then he never said really what it was. He just reminded the board of a higher standard that they had to go to when making a decision. Mr. Crowe then asked the Planner how many phone calls that he did get. Mr. Woodruff stated that it was greater than two and probably less than six. He commented that the higher standard that any municipal town board is held to is almost the same as

when you're serving on a jury. It called a jurors standard, which basically entails that even though in your own mind, you may be biased in advance of hearing evidence put before you in an application, but if you keep it to yourself and you don't tell anybody, telegraph it or speak about it before you hear the evidence, then only you know. If you do speak about that either in the advance of a hearing or at another hearing at another board, that is biased, which means you should step down. What that does is to cast a pall over your proceedings and it makes it so someone who doesn't like the decision that you make could appeal it, most likely win in court, because that juror standard has been violated. You have to be held to that higher standard. It's not just about whether you have a personal interest or a financial or fiduciary interest. It is about that telegraphed possible bias that could happen.

Mr. Crowe asked if the callers identified themselves. Mr. Woodruff commented that he couldn't say who the callers were. Mr. Crowe asked if he had documented the fact the calls were made, other than the statement made at the meeting. Mr. Woodruff stated not in writing, no. Mr. Crowe then asked if he had discussed it with anyone prior to the meeting. Mr. Woodruff stated that he believed that he had mentioned it to the Chair. Mr. Crowe went onto say the reason that he was asking was that he got the distinct impression, as did some others, that there were aspersions being cast on the board by the way it was delivered. Not the content, but the way it was delivered, and he found that upsetting in valuing his own integrity. He found it an attack on the integrity of members of the board on the way it was delivered. Mr. Woodruff noted the comments were understood.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:07 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Alison G. Kepple
Office Secretary