

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

Regular Meeting

October 16, 2013

Minutes

Present: Members: Bob Stephens, Russ Nolin, Joseph Crowe, Ken Bickford
 Alternates: Jerry Hopkins, Natt King
Excused: Member: 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 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. Nolin moved to approve the Zoning Board of Adjustment Minutes of October 2, 2013, as written, seconded by Mr. Crowe, carried unanimously.

Motion: Mr. Bickford moved to approve the Zoning Board of Adjustment On-site Minutes of October 5, 2013, as amended, seconded by Mr. Nolin, carried unanimously.

IV. Hearings

1. Continuation of Public Hearing - Brian Lynah (130-57)(40 Gansy Lane)
 Variance to Article III.B.3 & B.4

Mr. Stephens stated that this was a continued hearing for an application for a variance. The hearing had been continued to allow for the board to conduct and onsite visit of the property, which was held on October 5th.

Brian Lynah was present for the hearing this evening.

Mr. Crowe questioned the height of the building. Mr. Lynah stated that it would not exceed the height allowed by the ordinance, perhaps 10-12 feet, and would not have a second floor.

Mr. Stephens stated that while on the site walk Mr. Lynah had staked out an area for the proposed 12' x 24' accessory structure, noting that the applicant indicated that he had staked the area that included a 3' +/- buffer, to ensure that he would not encroach closer than the distance that he was requesting in his application or approved in the NH DES Permit by Notification.

Mr. King commented that while he could see why Mr. Lynah would like to have a garage, he did not feel that it was keeping within the spirit and intent of the ordinance. The proposal goes against the ordinance and the spirit and intent of the shoreline protection. He stated that Mr. Lynah does have a reasonable use of his property.

Mr. King then went onto ask a procedural question, asking if the board was going to vote on each of the criteria. The board then entered into a discussion regarding this question. Mr. Woodruff commented that during the Board's deliberations they should be using their worksheet, which the board worked hard on to develop. In their deliberations as a Board, they have not been voting on each of the criteria per say, voting at the end, seeming only coming to a consensus for each of the criteria. In the past, many boards across the State were voting on each of the criteria, as they did as well, but they have changed that. Mr. Woodruff stated that members should be filling out their worksheets.

Mr. Nolin recommended that if the board were to approve this request, that the location of the building be pinned by a licensed surveyor.

Mr. Stephens opened the hearing for public input.

Ken Kasarjian thanked Mr. Lynah for coming before the board to present his proposal to them as opposed to doing it as others have done in the past in an arrogant way, which started the prior discussion. He hopes that the board takes this into consideration this evening as others have gone forward without the proper approvals.

Mr. Woodruff referred to his staff memo of September 26th, stating he was in favor of the request for relief from the setbacks as requested. The lot is unusual because it is located on a point of land, thereby making the shore front setback applicable on three sides, which is not normal and a unique situation. The only location for the shed that would meet the setback requirements would be in the existing driveway, close to the house. The one location that is viable has been requested and the applicant has an approved Shoreland Permit by Notification. The maximum size allowed by the State is a 288 square foot area, whether it is a shed or garage, and by our ordinance it is an accessory structure to the principal structure on the land and is permitted if he can meet setbacks, which is why he is requesting the variance. If the Board does grant the variance Mr. Woodruff recommended that a condition is applied that the Notice of Decision be recorded at the Carroll County Registry of Deeds.

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 the granting of the variance at 7:47 PM and came out of deliberative session at 8:07 PM.

Mr. Lynah stated that a comment was made by one of the members regarding impervious surfaces causing milfoil, and he asked what the coalition was between the two. He also asked how placing a shed/garage added to the impervious surface that is already a gravel area.

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

Motion: Mr. King moved to deny the request for **Brian Lynah, Tax Map 130 Lot 57**, for a variance from Article III. B.3 & B.4, 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. Nolin.

Mr. Bickford asked if the board was willing to discuss any kind of mitigation or anything else that would allow this to happen. Reducing the size or adding some type of water control, or ask the applicant to do that. Mr. Nolin asked if the board was reengineering the project. Mr. King noted one of his concerns was that the ordinance specifically addresses the need to prevent the overcrowding of land and did not see where mitigation would help on that point.

Mr. Bickford stated that there was a lot of hard pack on the lot now and there is a lot of runoff. Perhaps by allowing this, they could get something that was better than what currently exists. It was noted the applicant could ask for a continuation or the board could take action, and if it is unfavorable to the applicant he has the right of appeal. In order for the board to grant a rehearing the applicant must have additional evidence, or something that represent a substantial change, thus allowing the board to reconsider his request for variance.

Mr. Stephens called for a vote on the motion. Motion passed, four (4) in favor (Nolin, Bickford, Crowe, King) and one (1) opposed (Stephens).

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

2. Continuation of Public Hearing - Richard Madison (99-196)(15 Myrtle Drive)
Equitable Waiver of Dimensional Requirements

Mr. Stephens stated that this was a continuation for the application for an equitable wavier. He noted the board was in receipt of an email dated October 10, 2013, from Attorney Doug Hill. Mr. Hill stated in his email that due to personal reasons, his client, Mr. Madison is unable to attend the hearing this evening, and has requested a continuance until the first meeting in November. Mr. Stephens commented that this was the fifth request for a continuance, and asked the Town Planner for his input regarding this request.

Mr. Woodruff stated that he had met with Attorney Hill this morning. He noted while the request for continuance was dated October 10th, it was sent on the 11th. Mr. Woodruff had requested to receive the results of the survey. The surveyor was attempting to certify or corroborated that the Associated Surveyors survey was correct or not. Attorney Hill went over what has been done, and indicated that Dave Dolan has corroborated the survey performed by Associated Surveyors (the surveyed plan excerpt that was originally submitted by the applicant and that was used by the abutter in their variance case). The surveyor does note that two of the pins are very, very loose and therefore affect the boundary by as much as a foot. This affects more than one party. He stated more importantly that because many of the older surveys didn't establish horizontal control for the points on the ground to locate them where they are in the world on a coordinate system. They have simply correlated the boundaries of the parcel based on angles and distances, bearings and distances, to each other. And so there appears to be many inaccuracies, not just with this lot, or the lot next to it, but in that whole area because there was no requirement for a horizontal control to be set because it's expensive. A surveyor has to go to a known point in the world and survey back to the boundary points to establish that known point in the world. If this is not done, you will end up with stuff like this, which happens a lot in places that were laid out in the 50's and 60's. That is the case with this area. The reason for asking for the results of the survey was to make certain that the applicant was moving along as the ZBA intended.

Mr. Nolin questioned if Mr. Woodruff saw the plat. He stated that no plat has been done, but the work was done by the surveyor. The surveyor has corroborated that the Associated Surveyor Plan is correct. Mr. Stephens asked if he knew if they were bringing a survey of the Madison property. Mr. Woodruff stated he did not know. Mr. Nolin stated that was what they had asked for. They asked to have the building shown on the lot as well as the height of the building. Mr. Stephens stated that this needed to be communicated to Attorney Hill. The ZBA had anticipated from the onset, their original request that

they were going to get a survey delineating the location. Members were under the impression that was what they were going to get for this evening. Members discussed this issue at length.

Mr. Stephens stated they have a request for a continuance, and if the board does grant the request, that it be the final continuation. That is what is before them this evening. Mr. Hopkins commented that the board either approves the continuance or they don't. If they don't approve the continuance, what is the status of the application? Mr. Woodruff stated if they don't grant a continuance, they'd have to hear the case tonight and if there is no one here to represent the case, then they're not hearing anything, and most likely they would deny it. Attorney Hill did request if they were not to continue, and were to deny, that they deny without prejudice in the motion, which would allow them to come back with an entirely new application at some point.

A discussion ensued regarding a continuance, noting that there were abutter's and other members from the public who were in attendance for the hearing this evening, some who will not be able to attend if the hearing were to be continued. Some members felt that they should be able to make a statement and if they wish, give a written statement for the next hearing if granted by the Board. It was the decision of the board to give these members of the public an opportunity to comment and have their concerns placed on record. If the board were to continue the hearing, their comments would be part of the record.

Motion: Mr. Stephens moved to open the public hearing for the sole purpose of hearing abutters that may not be able to be here at a continued hearing if granted by the Board, seconded by Mr. Nolin, carried unanimously.

Several abutter's and members from the public stated their concerns with the application as submitted by Mr. Madison. The concerns noted were relating to setbacks, drainage and the height of the building.

Abutter Frances Eklund, 19 Myrtle Drive, read her letter of October 16, 2013 into the record (attached) expressing her concerns with the request for waiver.

Mr. Stephens noted for the record that the Board was receiving comments, and that they were not discussing the comments, as they were not in a hearing mode. They were in public session for the purpose of taking public input.

Kevin Quinlan, 12 Pleasure Lane, stated he was President of the Balmoral Association, and is responsible for the roads as well. He expressed his concerns with the changes to topography that Mr. Madison has made to the land. The land has been raised and changed the flow of water, which now ponds on the road, creating a mess for other residents in the area. There was a natural gully that was filled and blocked. Mr. Quinlan would like to request that the land be restated and the gully be put back so that the water will flow freely from the road and not continue to damage the roadway.

Abutter Joe Gerrior, 11 Myrtle Drive, noted his concerns with drainage onto his property. Mr. Gerrior stated that he had written a letter to the town regarding this issue and was told that this was a civil matter. Mr. Gerrior commented that the dwelling under construction by Mr. Madison exceeds the height restriction. Mr. Madison has added fill to the lot, which then causes runoff into his yard. Mr. Gerrior expressed his frustration with the process in which has dealt with regarding his concerns. Mr. Madison was sent a letter last October requiring a survey of the property, which was just done recently. The board continues to grant continuances and he is not able to attend another continuation.

Other issues and concerns noted were regarding the septic permit. They claim the septic approval has expired, is only for a two bedroom design and that the dwelling is actually three bedrooms.

Mr. Woodruff stated that a stop work order has been placed on the project.

Nelson Dion, 7 Myrtle Drive, commented that a surveyor had been to the site and that they set two pins in the driveway.

Steven Maguire, 312 Paradise Drive, asked what the procedure was of the board.

Ken Kasarjian questioned the height restriction in the ordinance, and how that was calculated.

It was noted at this time that there was a malfunction with the tape recorder in which the cassette tape was damaged. It is estimated that this was for approximately a half hour, 8:45 – 9:15.

Mr. Stephens asked if there were any other members of the public who wished to enter testimony into the record this evening. There was none at this time.

The Board next entered into a discussion regarding the request for continuance. If the hearing were to be continued the testimony given this evening would be a part of the record. Members were in agreement to continue the hearing to November 6th, requesting that staff reiterate to the applicant or Attorney Hill that they have requested an actual survey plan from Dave Dolan and that includes height measurements for the dwelling as well.

Motion: Mr. Crowe moved to continue the public hearing for Richard Madison (99-196) until November 6, 2013, with the condition that no further continuances shall be granted, and that the board expects a complete survey of the Madison property for the hearing, not just confirmation of the original “sketch” submitted with the application, seconded by Mr. Nolin, carried unanimously.

V. Correspondence

VI. Unfinished Business

Mr. King asked if the engineer had signed off on the Bears Nest Tower. Mr. Woodruff stated that H.E. Bergeron Engineers has signed off and that a building permit was issued and has requirements. There are conditions which include an inspection schedule.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:22 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

Attachment 10/16/13

TO WHOM IT MAY CONCERN:

For the past ^{SEVERAL} ~~many~~ years, I have been attempting to resolve an issue with the building of a house in the lot adjacent to my property by Mr. Madisen. Mr. Madisen erected a building which does not meet the current building codes. From what I understand, the building codes are not "suggestions" but rules that need to be followed by all people, unless a waiver is granted/received. I would like to go on record stating that I am not going to provide any waivers of any type to Mr. Madisen and hope that the board will enforce the codes and have Mr. Madisen bring his property within them for the following reasons:

1. These codes are not new. They have been in-place for numerous years.
2. Mr. Madisen has a responsibility to understand the codes and ensure that he is meeting the codes PRIOR to the start of any build. Ignorance of the laws and/or rules does not mean exemption.
3. My daughter and I approached Mr. Madisen PRIOR to his start of construction informing him that the current foundation did not seem to meet the 20' set back. Mr. Madisen initially ignored my attempt at discussion and when I pressed it he looked at me and stated, "so sue me."
4. I informed this board of my setback concerns through the building inspector, who then talked to Mr. Madisen about these same concerns. Thus, Mr. Madisen was provided probable cause for a set-back issue PRIOR to the start of the house construction. Mr. Madisen chose to ignore the concerns and continue the construction, at this point at his own risk.
5. The building codes are put into place to protect all the residence of the community. By violating the code and building within the setback limits on my side of the property, Mr. Madisen violates my rights as an abutting landowner as protected by the building codes.
6. I have owned my house and property for over 18 years and plan to keep it for as long as I live. This is my residence. Mr. Madisen is building a house for profit. Thus it seems that he violated the code to increase the potential profit of his house without concern of the rights of his neighbors and the longterm inhabitants of this community. It seems that this behavior was not done in ignorance, but in a desire to overbuild for the lot size in the hope of getting a higher house value sale.
7. There was no variance approved for this encroachment nor will I provide one in the future. Mr. Madisen is asking for "special treatment." For the board to overturn their policies and enable Mr. Madisen to build without the variance approval of the abutters sets a precedence that will be hard to overcome. Future building code violations will be able to refer back to this case when trying to avoid building code compliance and question why Mr. Madisen received different treatment than themselves. Since there were no extenuating circumstances, this precedence will be difficult to overcome and justify.

What I strongly feel needs to be accomplished is that Mr. Madisen, like everyone else, should need to obey the building codes for the area. Since no variances are agreed to by the abutting neighbors, especially myself on whose set back Mr. Madisen is encroaching, I hope that the board will enforce its

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policies and have Mr. Madisen bring his structure within the stated codes. Again, I want to go on record saying that I will issue no variances for any part of this build.

I had hoped to be here for the board meeting. However, Mr. Madisen has postponed the meeting for over 9 months, in my opinion waiting until I returned home which thus would preclude me from attending. I hope that this is also considered. It may be his "right" to delay the meeting, but in doing so he took away any chance of working this out and thus, I stand firm in my denial of any variances and hope that the board will abide and stand by their own stated codes.

Thank you for your time and consideration. If possible, I would like to telecom into the board meeting during the land discussion so that I will at least have some minimal ability to participate. Also, I will be available at anytime if there is the need to call me to clarify any of these points.

Sincerely,

A handwritten signature in cursive script that reads "Frances Eklund". The signature is written in dark ink and is positioned below the word "Sincerely,".