

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

Regular Meeting

March 5, 2014

Minutes

Present: Members: Bob Stephens, Russ Nolin, Joseph Crowe, Ken Bickford
 Alternate: Paul Onthank
Excused: Member: Bob Zewski
 Alternates: Jerry Hopkins, Richard Jenny
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 Paul Onthank to sit on the board with full voting privileges in place of excused member Bob Zewski. Mr. Stephens welcomed Mr. Onthank to the board as an Alternate member.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Crowe moved to approve the Zoning Board of Adjustment Minutes of February 19, 2014, as written, seconded by Mr. Bickford, carried unanimously with Mr. Stephens and Mr. Onthank abstaining.

IV. Hearings

1. Robert L. Waldron Revocable Trust, Robert Waldron, Trustee
 (132-013/001)(Toltec Point Road) Variance from Article III (I)

Mr. Stephens stated this was a request for a variance from the height restrictions under Article III, Paragraph I.

Nicol Roseberry of Ames Associates was present to represent Mr. Waldron who was in the audience this evening. Ms. Roseberry gave a brief description of the property, stating that Lot 013/001 was recently part of a Restoration of Involuntary Merged Lots which was approved by the Select Board last year. They have received a NH DES Shoreland Impact Permit and NH DES Subsurface Approval for Construction for the proposed 2 bedroom single family dwelling unit.

Ms. Roseberry referred to a plat, noting the existing profile of the land and the proposed fill necessary, explaining why the new dwelling footprint could not be shifted towards the front property setback line as recommended in the Planners Staff Memo. She also noted that there were seven homes of similar design/height on lots of this size in the surrounding neighborhood. She provided the board with two abutter e-mails stating that they have no objection to the variance request. Ms. Roseberry addressed each of the five criteria for the granting of a variance and answered any questions from the board.

Mr. Stephens asked for input from the Planner. Mr. Woodruff stated his input on this application was a little bit more negative than neutral on this application. He asked that the board asks the hard

question about the reasonableness of granting this relief. Questions such as, can the height be reduced reasonably to still give the applicant the walk-out basement, can they reduce the height of the walk-out basement, lower the elevation of the first floor to more closely match the post grade which might gain between a half of a foot and a foot, lower the height of the roof, lowering the grade at the top of the slope at the front of the lot rather than constructing a retaining wall with fill at the bottom of the lot. He felt these were questions the board needed to have answered to get to the meat of the hardship criteria. He stated if they should grant the request he respectfully recommended that the variance would have several conditions which were contained in this staff memo and to grant relief for up to three (3) feet as opposed to two feet, nine inches. This would allow for a small (3 inches) amount for error in construction.

Mr. Nolin questioned how far out the retaining walls were from the house. Ms. Roseberry scaled the plan and stated about 8'.

Mr. Stephens questioned what the proposed pitch of the roof was. Its pitch was not known, but Mr. Waldron commented that he had a conference call with both his architect and structural engineer and that they had discussed this and the proposed roof pitch is necessary for both aesthetics and structural.

Mr. Crowe questioned the ceiling heights. It was stated the first floor is 9', the second is 8' and the basement is 10'.

Mr. Bickford questioned why the grade of the driveway could not be steeper, because if the grade of the front was lower you'd have less an average. Ms. Roseberry commented that would still not bring the structure to a 32' average.

Mr. Stephens noted an e-mail from the Fire Chief regarding the height of the dwelling. Chief Bengtson had suggested that Mr. Waldron offer to install a residential fire sprinkler system in accordance with NFPA 13D. Mr. Waldron stated that he had a previous decision by the board for the granting of height variance in which the Fire Chief had recommended the same. Mr. Waldron offered to amend his application to include the in install a residential fire sprinkler system in accordance with NFPA 13D.

Mr. Stephens asked if anyone in the public had any questions, there were none. There were no further questions from the board at this time.

Mr. Stephens stated the board was going into deliberative session at 8:07 PM to discuss each of the criteria for granting the variance. The board came out of deliberative session at 8:27 PM. There being no further input from the board or the public Mr. Stephens called for a motion.

Motion: Mr. Bickford moved to grant the variance for Robert L. Waldron Revocable Trust, Robert Waldron, Trustee Tax Map 132, Lot 013/001 for relief from Article III (I) with the following conditions; 1. That an elevation certificate as to the structure's average height per code definition prepared by a licensed land surveyor (at time of framing) and be submitted to the Code Enforcement Officer for review and for the file, and that the overall height not exceed three (3) feet above the allowable height in the current Zoning Ordinance; 2. That the shed currently located on the common boundary line be moved to the building envelope on the adjacent property; 3. That septic leach field and lines access and maintenance easement be shown on the proposed plans, and language for same be added to the deeds or recorded as a separate instrument, with a copy submitted as part of the building permit application; 4) This Notice of Decision shall be recorded at the Carroll County Registry of Deeds; 5) that a foundation certificate be submitted to the Code Enforcement Officer as part of the building permit application process, and to close the public hearing and direct 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, seconded by Mr. Crowe.

Discussion on Motion: Mr. Stephens noted the need to add language restricting habitable space in the attic.

Motion: Mr. Bickford moved to amend his motion to include an additional condition of approval that the attic shall not be habitable, seconded by Mr. Stephens.

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

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

2. James R. Labrie and Eugene R. Labrie (254-10)(98 Beede Road)
Variance from Article III, B(3) & B(4)

Dave Dolan of David M. Dolan Associates, PC was present to represent the applicant. Mr. Dolan briefly described the property, location and existing structures on the lot. There is an existing house that is 3' from the sideline setback and 29' from the shoreline. There is a bunk house that encroaches on the easterly side setback and there was another dwelling that was removed by the prior property owner sometime between 2008 and 2011. The proposal is to remove the existing dwelling and construct a new dwelling that's proposed to be located, to the deck, 41' from the shore and 13.5' off the sideline. All the other existing structures, the existing house, the bunk house and a fish house that has morphed into a shed, will be removed. They will be increasing the distance from the side line setback approximately 10' and moving the house back from the shore from 28.7' to 41' to the deck, to the actual enclosed living space it will be 53'. There will be no setback encroachment on the east side. They are reducing the total impacts in the setback from 590 square feet to 419 square feet. They have received an approved Shoreland Impact Permit for the proposal and a NH DES Subsurface Approval for Construction for a 3 bedroom home. Since the septic design was approved they have been in contact with neighbor, Brian Labrie (no relation), who identified the correct location of his well. They have submitted a new design to DES that would relocate the septic system by rotating it and moving it a few feet. It will be 75' away from the abutters well. Mr. Brian Labrie has requested that they plant a row of Dark American Arborvitae's 7-8 feet tall, 6 feet on center along the property line. They are proposing a porous paved driveway back to the 250' setback. The project is a decrease in lot coverage from 16.93% to 16.24% and will bring the property nearly conforming to all setbacks. Mr. Dolan reviewed each of the criteria for the granting of a variance and answered any questions from the board.

Mr. Bickford asked why the house couldn't be 6 ½ feet narrower and go back deeper. Mr. Dolan commented that they have access into the lot and a septic in the rear of the lot so there is limited room.

Mr. Nolin questioned the square footage of the old building. Mr. Dolan stated it was 644 sq. ft. and the new one is 2,472 sq. ft.

Mr. Onthank asked how many floors. Mr. Dolan stated that it would not exceed the 32' height limitation of the ordinance.

There was further discussion of the size and location of the proposed dwelling. Mr. Bickford still couldn't understand why the dwelling couldn't be narrower. Mr. Dolan stated that the proposal is what they want and have submitted to the board for relief. There are other homes in the area of similar design, although their proposal has been shaved down on both sides.

Mr. Woodruff commented that due to other deadlines and commitments he had not prepared a written staff memo for this proposal. He noted that this is a lot of record, and since it is a lot of record it may be built upon. As the chair had commented, once the non-conforming grandfathered structures are removed, you have to consider that they aren't there at all. This is a vacant lot that may be built upon, and that has a building envelope. What is before the board is a request for relief from both the front (lake) and side setback. He suggested that the board look at the reasonable use test within the hardship argument. Is it a reasonable use given the circumstances, the unique shape of the lot, to grant relief? As when you move back away from the 50' lake setback, the side setbacks get narrower and narrower. He stated if the board was to choose to grant the variance he suggested three conditions; the arborvitaes be planted, a foundation certificate be prepared by a licensed land surveyor and submitted to the Code Enforcement Officer as part of the building permit application process, and all other structures to be removed.

Mr. Stephens asked if anyone in the public had any questions, there were none. There were no further questions from the board at this time.

Mr. Stephens stated the board was going into deliberative session at 8:55 PM to discuss each of the criteria for granting the variance. The board came out of deliberative session at 9:14 PM.

Based on input during deliberative session the following motion was made.

Motion: Mr. Bickford moved that the board conduct an on-site visit for James R. Labrie and Eugene R. Labrie, Trustee, Tax Map 254, Lot 10 on Friday, March 14, 2014 at 6:00 p.m., and to table the application and continue the public hearing until March 19, 2014, seconded by Mr. Crowe, carried unanimously.

Mr. Dolan will stake out the building location in relation to the sideline and lake front setback for the board to view and the area in which the driveway splits off to the neighbor's property.

V. Correspondence

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the February 19th, 2014 granting of a variance for CPK Realty Trust, LLC (135-10)(7 Moultonboro Neck Road).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on February 19th. There were no changes made to the draft.

Motion: Mr. Bickford moved to direct the Chairman to sign the Notice of Decision as written, for CPK Realty Trust, Tax Map 135 Lot 10 and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Nolin, carried unanimously with Mr. Stephens and Mr. Onthank abstaining.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:49 PM, seconded by Mr. Bickford, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant