

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

Regular Meeting

March 19, 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.

II. Pledge of Allegiance

III. Organizational Meeting - 2014 Board Organization – Election of Officers

Mr. Stephens stated this was the business portion of their annual Organizational Meeting. As Senior Member, he called the annual Organizational Meeting to order. Mr. Stephens stated that he was willing to serve as Chairman again and called for nominations for both Chair and Vice Chair.

Motion: Mr. Crowe moved to keep things status quo, nominating Bob Stephens as Chairman, and Russ Nolin as Vice Chair, seconded by Mr. Bickford, carried unanimously.

IV. Approval of Minutes

Motion: Mr. Crowe moved to approve the Zoning Board of Adjustment Minutes of March 5, 2014, as amended, seconded by Mr. Bickford, carried unanimously.

Motion: Mr. Crowe moved to approve the Zoning Board of Adjustment On-site Minutes of March 14, 2014, as written, seconded by Mr. Nolin, carried unanimously.

V. Hearings

1. Continuation of Public Hearing for James R. Labrie and Eugene R. Labrie (254-10)(98 Beede Road) Variance from Article III, B(3) & B(4)

Mr. Stephens stated that this was a continued hearing for an application for a variance.

Dave Dolan of David M. Dolan Associates, PC was present representing the applicants at the continued hearing. The hearing had been continued to allow for the board to conduct an onsite visit of the property. They had met onsite Friday evening to go over the location of the proposed house. Mr. Dolan provided the board with a revised plan, adding a green line to highlight the edge of gravel of the

existing driveway that provides access to the abutting property. Members had viewed the location of the house, which was staked, the setback was staked for the 50' setback from the shore as well as the side line setback. The proposed location of the leach field is shown, noting what was staked was the location of the bed itself and that the fill actually extends outward from that about 8'. Mr. Dolan commented that while standing in the proposed location of the house, both neighboring houses are forward from the proposed house. Mr. Dolan pointed to an area on the plan towards the lake there is a beach area that apparently had been excavated out of the shoreline. Mr. Dolan provided members with a reduced copy of the original subdivision plan for reference, showing the shoreline fairly straight. Since it has been excavated they are required to measure the setback from that area, which pushes the setback further into the proposed deck. If you were to assume the original shoreline, the point of the deck would be 51' to where the shoreline originally was. Mr. Dolan commented that those were some unique physical characteristics of the lot, the configuration, the limitation on access, the fact that there's a prescriptive right for someone to continue to use the driveway to the neighboring lot. Pushing back the house would get you into the leach field, and it would eliminate the parking area. It would have to go behind the leach field. He stated that there are a lot of limitations to the lot.

Mr. Dolan noted that they had reviewed all of the criteria at the prior hearing, noting they had gotten hung up in discussing the hardship and the unique characteristics of the lot had prevented them from developing it in full compliance with all of the ordinances. He does not believe that they can and feels that the request is reasonable. If you look at the abutting properties, if they choose to redevelop and relocate the houses, they will be in the same situation. Mr. answered any questions from the board.

Mr. Stephens questioned the dimensions of the proposed parking area, stating Mr. Dolan commented by moving the house back you'd be crunching onto the leach field, subsequently reducing the size of the parking. Mr. Dolan stated if you move the house back you will reduce the size of it, or have to relocate it. It is 22' wide, which is not excessive.

Mr. Stephens noted that it had been stated that the owners also own a lot a few lots down and desire to construct a similar style house. Mr. Dolan replied that was what they started with. That house has larger wings on the side and an attached garage.

Mr. Stephens questioned the width of the building envelope, from side setback line, to side setback line at both the front and the rear of the proposed house, excluding the deck. Mr. Dolan stated the overall width between the setback lines is 42-43 feet at the front and 36-37 feet at the rear.

Mr. Stephens asked Mr. Woodruff for any further comments. Mr. Woodruff referred to his staff memo of March 13th, in that should the board grant the variance request, staff respectfully recommends the variance have some conditions; 1. That a foundation certificate be submitted to the Code Enforcement Officer with the application for a building permit; 2. That the plan submitted as an exhibit for the ZBA and the approved shore land permit plan be adhered to, with a copy submitted as part of the building permit application. 3. That the plantings shown and noted on the ZBA exhibit plan be planted at the appropriate time of year and inspected by the Development Services Office prior to the owner obtaining a Certificate of Occupancy for the dwelling.

Mr. Woodruff provided members with his staff memo, a neighborhood plan that he had prepared which shows some measurements for other dwelling structures in the neighborhood with both dimensions to the lake and to their side boundary lines, and that gives them a snapshot view of what the neighborhood it like.

Mr. Stephens asked if any abutters or members of 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 7:46 PM to discuss each of the criteria for granting the variance. The board came out of deliberative session at 8:08 PM. Mr. Dolan

rebutted, going back to the application as made available to the members, what they submitted, he stated they were skipping over what he intended to address in the criteria, which is 5.a. They've skipped over that to the other, 5.b. It is either one or the other. He went onto say what he has tried to address is that no fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to this property. That was what he was trying to point out, such as on the front, the configuration of the shoreline. He felt the board was ignoring what he intended to address and going to another criteria. Mr. Stephens commented that he felt it covers, to his way of thinking, the issue of the setback from the water, but it doesn't cover the issue of the setback in the width, because even if the bump into the shoreline didn't exist, that would make the water setback in the current location unnecessary because you would be at 51' according to the plan. It doesn't change the width issue unless they move the house into the water setback. Mr. Dolan stated his point again was the gain to the general public by redesigning something that someone else thinks is reasonable, where this is not an extremely large house of what's been built in that general neighborhood. He thinks that it is a reasonable use for the property given the footprint and there's no substantial gain to the general public by strict compliance with the ordinance.

Mr. Stephens noted that he didn't believe that the board had had a problem with the general public component. They're trying to look at the hardship component. Mr. Stephens reviewed the purpose of the ordinance which had been previously established. After discussing this, members were in agreement that they had the correct interpretation of what they believe thus far and have applied the correct criteria.

There being no further input from the board or the public Mr. Stephens called for a motion.

Motion: Mr. Onthank moved to deny the request for **James R. Labrie and Eugene R. Labrie, Tax Map 254 Lot 10**, 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. Crowe, carried unanimously.

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

2. Continuation of Public Hearing for Zaremba Program Development, LLC on behalf of Dollar General (52-18)(929 Whittier Hwy) Variance from Article XII.V(B) and XII.V(C)

Mr. Stephens stated this was a public hearing for a variance for relief from the requirement for post-development storm water runoff rate and volume not to exceed pre-development levels for a 50 year storm event and to not maintain the Groundwater Recharge Volume (GRV) when compared to pre-development conditions.

Scott Holman, from the Zaremba Group was present this evening. Also present was Attorney John Sokul from Hinckley Allen, Erin Lambert and Naomi Praul from Nobis Engineering and Tom Sokoloski from Schauer Environmental Consultants. Mr. Holman stated that he was going to give a quick overview of the project prior to turning it over to Mr. Sokul and the engineers. Mr. Stephens interjected that the application before the board is for an alternate storm water management and that it has nothing to do with the structure, the business or anything else. They are strictly looking for relief from storm water management. Mr. Stephens asked that the members keep that in mind.

Mr. Holman stated Zaremba Group is a partner developer for Dollar General. His role in the project is to put together a team to go through the approval process, and once all permits are issued Dollar General will buy the property. Zaremba group will monitor construction and then Dollar General will own and operate the building and land. Mr. Holman began an overview of Dollar General and the products

they carry. Mr. Stephens apologized for interrupting Mr. Holman, commenting that he wanted to be very clear, that they were talking about storm water management. He did not want to cloud the issue of storm water management with perhaps somebodies desire, or lack thereof, of a particular institution being placed on that property. Mr. Holman continued by stating that the proposal is for a 9,100 sq. ft. building, with 30 parking spots, full access entrance and then turned the presentation over to the engineers to talk about storm water.

Erin Lambert of Nobis Engineering explained the details of the site as it related to the development and details of the storm water. She briefly described the location of the site, pointing out that the driveway will align with Blake Road, which is a requirement of the NH DOT driveway permit. It will be a shared common access drive for the remainder of the parcel. The proposal as shown has 30 parking spaces. They have worked to reduce the impervious area and will be asking the Planning Board for a waiver as 36 spaces are required. The site has been laid out so that all turning movements can be done onsite, outside of the right-of-way. They met with Conservation Commission earlier, noting their two comments which included more details of the drainage design, which they have submitted a drainage report. And they asked that they take a look at providing some compensatory wetlands. She noted that the project did not reach the threshold to be required to do mitigation. They have provided additional wetlands on the property. They have analyzed the stormwater on both their property and the watershed above their property which runs through the property. They're taking stormwater just ahead of their development, putting it into a swale and let it continue through in the channel that it goes today. That will keep the overland runoff clean and it will not interact with the runoff from the stormwater from their site. It will continue through in the same hydrologic path that it goes today. Ms. Lambert went onto explain that they will be capturing the runoff from their building, the parking and the driveways. That will go into a detention pond that has been designed to control the rate of runoff and to treat the runoff prior to it leaving their site. The control was designed in accordance with the NH DES Alteration of Terrain rules. She stated one of the variances that submitted was regarding Groundwater Recharge Volume (GRV). They are having trouble achieving infiltrating the site as there are unique soils which have a very high groundwater table and have a very slow infiltration rate. They're proposing three depressions to capture water so that they can achieve the GRV, so they no longer need that variance. In regards to the Con Com comments, they will plant the ponds with some wetlands plants to try to achieve the compensatory wetlands. Ms. Lambert went onto explain how the pond works. They are maintaining the existing hydrology area. This same pond will be used as their fire pond as well. The reason they are requesting the variance is that with the pond they are able to control the rate of runoff, but they aren't able to infiltrate the water as they have higher groundwater and very poorly drained soils, the water will run out of the pond at the same rate or less, but it is going to run for a longer period of time. Ms. Lambert answered any questions from the board.

Mr. Bickford as for clarification a comment mentioned of a shared drive. Mr. Lambert referred to the plan, noting there is no parking in the front corner as that is a shared common access drive for the abutting property. There will not be a second curb cut on Route 25 if the abutting property were to be developed in the future. There will be an easement for a shared common driveway. Mr. Bickford asked if they would be maintaining the fire pond and questioned the operation of the pond. Ms. Lambert noted that the pond will always have water in it and it has been designed to have the minimum volume required for fire protection and proper operation for the retention pond.

Mr. Woodruff stated that the applicant has submitted a detailed drainage analysis to the office, and there are three copies available to the board this evening, and the report had been emailed to them.

Tom Sokoloski of Schauer Environmental explained the wetlands down gradient from the site. He noted that he is a Soil Scientist and Wetland Scientist. He was asked to look at the wetlands on the site and the adjacent properties down gradient from the site in order to form an opinion on how the stormwater management system that is proposed might affect wetlands down gradient. He stated that they did not go onto private property. Mr. Sokoloski stated that they had come up with an approximate drainage path and explained the information they gathered and how they arrived at their opinion. A report

prepared by Peter Schauer was provided to the member in which they have concluded that the “small increases in stormwater flow duration are also highly unlikely to adversely affect the functions and values of the down gradient wetland.” Mr. Sokoloski stated their conclusion is that the stormwater system are only extending durations slightly and not contributing more water offsite and have an existing flow path that they are following. There will be no effects of an adverse nature on the wetlands down gradient from the property. Mr. Sokoloski answered any questions from the board.

Mr. Stephens briefly summarized what was said, effectively suggesting that while the total volume of water leaving the site won't effectively change, the duration during which it will leave will effectively change, asking if that was correct. They are controlling the duration. Mr. Sokoloski stated that was correct. Ms. Lambert stated the rate will be the same or less, but the volume is greater by nature of the fact that it's no longer being infiltrated. It is being collected and disbursed over a longer period of time. Mr. Crowe asked how that would affect surrounding properties. Mr. Sokoloski does not believe that based on the small amount of flows, and the extension of the duration of the flows, that you will see any increase in size of wetlands, increases in the height of water tables in those wetlands, increases in surface water depths in the wetlands beyond currently what is there now.

Mr. Nolin questioned the square footage of the lot and the impervious surface. Ms. Lambert stated the lot is a total of 85,450 sq. ft. or 2.6 acres. There is approximately 26,000 sq. ft. in the A zone, which is about 40%, where 50% is allowed, 6,152 sq. ft. in commercial zone C, which is about 30%. There is roughly 32,000 sq. ft. total.

Mr. Woodruff noted for the record the March 13th letter from Nobis with regard to not moving forward with the second part of the variance, requirement XII.V.C of the ordinance. He noted several abutter letters that were submitted in opposition of the project. He commented the report of their being little affect to the wetlands down gradient does not address the folks below or manmade structures that bisect the down gradient lots, Moulton Drive. Mr. Woodruff had provided the members with a neighborhood map that shows a blue line, which is Moulton Drive. The existing water course that is defined that runs down towards the pond does have to go through Moulton Drive and there are some culverts down there. He thinks that these culverts would be affected. He did note for full disclosure that one of the town employees does live on Moulton Drive, has spoken with him and submitted a letter for the record. She feels the assessment that was done really should have had them asking for permission to go onto their lots. The assessment was done only focusing on the wetlands. Mr. Woodruff referred to his staff memo of March 13, 2014. He recommended that the board consider a peer review in order to validate more fully understand the circumstances and engineering strategies dealing with the hydrology of the area that this affects. He read the staff memo into the record which included his staff recommendation, reason for staff recommendation of a peer review and the continuance of the public hearing to a date specific.

Attorney John Sokul was present this evening to speak to the request for the variance. He commented the Planner was correct with the key issues. The reason they had the wetlands study done was to assess the impact of the increase in the volume of runoff, if any, on downstream abutters. They asked the wetlands scientist to find the path of the runoff from the one location on the site that they are requesting the variance for and he put together a likely path that shows that the runoff will discharge into existing wet areas and follow existing water courses and wet areas down to the pond below. Other than the runoff from the property that is following those areas, there will be none that would affect down gradient abutting or non-abutting property owners and none of those people will suffer any damage to their improvements, structures, driveways, culverts or the like. By controlling the rate there should not be any more runoff at any given point in time going through those culverts to create a problem, although water running through those culverts would run for a little bit longer. He believes the report submitted addresses a lot of the points raised by the Planner. Mr. Sokul stated that they do not object to a peer review of the report and the questions concerning impacts on downstream abutters are essentially the crux of the matter and that no one should suffer any damage to their houses, properties or other improvements as a result of this project. They don't believe that will happen and believe they have submitted evidence

that shows it won't happen. Mr. Sokul proceeded with addressing each of the criteria for the granting of a variance, detail in his narrative in support submitted as part of the application for variance. Mr. Sokul closed with stating that they feel the proposed use is a reasonable one and any meaningful development on the site is going to run into the exact same problem and the way they have addressed the problem in this particular situation is a very good one under the circumstances. Mr. Sokul answered any questions from the board.

Mr. Nolin questioned if the lot as depicted on the plan existed at this time. That it wasn't subdivided at this time. Ms. Lambert stated that was correct. They still need to file for site plan review and subdivision which will be submitted shortly.

Mr. Stephens opened the hearing to the public. Abutter Bill Gordon, 39 Moulton Drive expressed his concerns with the project. He noted all of the properties below the site have water problems already. He stated any change to the project site will cause problems for Moulton Drive, it is a private road and they don't have money to fix the road. He respectfully asked that the board deny the variance.

Mr. Stephens noted they were in receipt of four letters regarding this proposal. These were not read into the record, noting they were from Heidi Davis, William Gordon, Ken Dorais and Elizabeth Morin, from Imaginations, A Child's Place (day care). These letters were included in Members packets.

Mr. Stephens asked if in this process if there was any attempt in the evaluation process to contact the land owners whose property this water flow would go across to request permission to go on their property and do a site specific analysis? It was stated no. Mr. Holman stated that they were willing to speak with the abutters and property owners down gradient.

Mr. Woodruff commented that there are two major questions that need to be answered with a peer review. This is not to question their engineering design or the conclusions of their analysis, it is to answer whether a system can be engineered at a reasonable cost that meets requirements, being the stormwater management ordinance and does the longer run of time, hence greater volume, affect things like access roads and the culverts under the access roads that were sized for a certain volume. Obviously there not on this site but possibly there is a measure of responsibility to find out whether they can handle the increased volume.

Mr. Nolin inquired as to whether a joint meeting would be a positive thing for this project and Planner Woodruff stated that he didn't think that it would serve a positive purpose.

Mr. Stephens commented they should table the hearing to a date specific and establish exactly what it is the board is requesting of the applicant. They would like them to go onsite to the surrounding properties, an evaluation of the path of the water, the potential impact specific on the drainage culvert as it relates to the intersecting road. Taking this information gathered/generated, adding it to the materials completed and presented, all for a peer review. It was noted the need to establish an escrow account in an initial amount of \$4,000 for peer review. There was a brief discussion on meeting dates, times and deadlines that would be necessary for submission of any new materials.

Motion: Mr. Stephens moved that the Board table the application for Zaremba Program Development Group, LLC for Dollar General (52-18), continue the public hearing until May 7, 2014, and to 1) Require a peer review; 2) Establish an escrow account in the amount of four thousand dollars (\$4,000); 3) Request written right of entry authorization from the surrounding property owners to carry out assessments (as noted above) of said properties, roadways and culverts; 4) Require written confirmation of contact either granting or denying entry onto said properties, seconded by Mr. Bickford, carried unanimously.

The Board took a five minute break from 9:33 – 9:38.

VI. Correspondence

VII. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the March 5th, 2014 granting of a variance for the Robert L. Waldron Revocable Trust, Robert Waldron, Trustee (132-013/001)(Toltec Point Road).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on March 5th. 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 the Robert L. Waldron Revocable Trust, Tax Map 132 Lot 013/001 and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Crowe, carried unanimously.

2. Mr. Stephens noted that Nicholas DeMeo was present again this evening to express his interest to serve as an Alternate Member of the Zoning Board of Adjustment. Mr. DeMeo provided the Board with his resume and a letter of interest to serve. After a brief discussion with him the following motion was made:

Motion: Mr. Nolin moved to appoint Nicholas DeMeo as an Alternate Member of the Zoning Board of Adjustment, seconded by Mr. Crowe.

Mr. Stephens questioned the when his term would end. It was noted that due to the recent elections and appointments of other alternate members, Ms. Whitney was not prepared with a date. It was noted that they term would be staggered in accordance with State Statute. Motion passed, unanimously.

3. Mr. Woodruff briefly updated the Board regarding the Madison lawsuit, noting that he had prepared the answers to the Madison complaint and forwarded them onto Town Counsel. Any member who wished to review those answers may contact him in the Office.

4. Mr. Stephens noted that the annual NH OEP Spring Planning and Zoning Conference will be held this year on Saturday, May 3rd at the Mountain View Grand Resort and Spa in Whitefield, NH. He encouraged all to attend this training. Additional information will be sent out when available from OEP.

VIII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:50 PM, seconded by Mr. Crowe, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant