

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

Regular Meeting

April 16, 2014

Minutes

Present: Members: Bob Stephens, Russ Nolin, Joseph Crowe, Ken Bickford
 Alternates: Jerry Hopkins, Paul Onthank, Richard Jenny
Excused: Member: Bob Zewski
 Alternate: Nick DeMeo
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. Approval of Minutes

Motion: Mr. Crowe moved to approve the Zoning Board of Adjustment Minutes of April 2, 2014, as amended, seconded by Mr. Bickford, carried unanimously.

IV. Hearings

1. David DeVito (282-27)(23 Adams Shore Road)
 Variance from Article III, B(3)

Mr. Stephens stated that this was an application for a variance for relief from Article III. B (3) for the construction of deck within the side line setback.

Mr. DeVito and his contractor Tim Cahoon were present this evening for the hearing. Mr. DeVito stated he would like to build a deck off the right side of the garage so that he would be able to park a boat underneath the deck for winter storage.

Mr. Stephens asked the reason why the other side of the garage would not work. Mr. DeVito commented due the way the back of the lot is setup, if you proceed up the driveway, you cannot make the turn from the end of the house to where the garage will be to maneuver around to get to the other side.

Mr. Stephens commented that he gone to the site today to view the existing conditions. Mr. Onthank stated he too had been to the site, and Mr. Bickford noted he had also gone down to view the site. It was noted that the members who had gone to the site did so individually and not as a quorum.

Mr. Woodruff stated that he had not gone to the site. He referred to his staff memo of April 14th, noting the request is to encroach 7 ft. into the side line setback, resulting in a setback of 13 ft. where 20 ft. is required. He commented that it appears that the deck is meant to serve a dual purpose, not only as a traditional deck but also as a cover for storage of a boat. The deck is proposed on the side next to a lot

that is a septic system lot for the waterfront lot across the road. The board may wish to find out if that lot could ever be built on. He stated he did not have any recommendations one way or the other.

Mr. Nolin commented that he was having trouble orientating himself with the sketches and drawings provided. Mr. Stephens assisted members in the location of the existing home and the proposed garage based on his viewing of the property.

Mr. Onthank asked if the garage is currently under construction. Mr. DeVito stated that was correct.

Mr. Hopkins questioned what will be above the garage. Mr. DeVito stated eventually it will be a room, but for right now it will be for storage.

Mr. Stephens questioned the width of the proposed deck. Mr. DeVito noted it was 10 ft. Mr. Stephens asked if the deck was an afterthought. Mr. DeVito commented it was an afterthought. After looking it while it was being built, he was discussing with his contractor about putting a deck off the front so that they may look out at the lake and then decided to seek a variance for the proposed deck on the right side to allow for boat storage underneath the deck, and utilizing the deck off the room.

Mr. Stephens briefly described the features of the property, and the location of the septic on the abutting lot.

Mr. Stephens opened the hearing for public input, noting there was none at this time.

Mr. Woodruff commented the board if they were to grant the request for variance he suggested that they place a condition on the approval that the deck not ever be filled in or enclosed underneath or above into finished space.

Kathi Margeson questioned if abutter notification was required for this application. Mr. Stephens stated yes.

Mr. DeVito questioned if the Board was in receipt of a letter from the abutter located at 24 Adams Shore Road. Mr. Stephens stated they were in receipt of a letter dated April 9, 2014, from abutter Muriel B. Gagne stating that she had no objections to the variance as requested by Mr. DeVito.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none. He closed the public hearing and the board went into deliberative session to discuss each of the criteria for the granting of the variance at 7:44 PM and came out of deliberative session at 8:06 PM.

Mr. DeVito asked that members take into consideration that over half of the properties on the street have structures that are on the property lines. He also noted that he would not have access or get things under the deck safely if he were to build it on the other side of the garage. He noted that the septic system is right there. He stated that if he were able to construct the deck it would increase his assessed value therefore he'd pay additional taxes, adding to the Town's tax base.

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

Motion: Mr. Bickford moved to deny the request for **David DeVito, Tax Map 282 Lot 27**, for a variance from Article III. B.3, 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. Onthank, carried unanimously.

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

V. Correspondence

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the April 2nd, 2014 granting of a variance for Moultonborough Real Estate Trust & Melinda H. Bradley (207-4)(12 Tennis Lane).

Mr. Stephens unseated Alternate Paul Onthank and seated Jerry Hopkins for purposes of approving the Notice of Decision for Tax Map 207, Lot 4, as Mr. Hopkins had been seated as a voting member for this application that was heard on April 2nd, 2014.

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on April 2nd. 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 Moultonborough Real Estate Trust & Melinda H. Bradley, Tax Map 207 Lot 4 and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Hopkins, carried unanimously.

2. Mr. Stephens reminded members that the annual NH OEP Spring Planning and Zoning Conference is to be held on Saturday, May 3rd at the Mountain View Grand Resort and Spa in Whitefield, NH. He has reserved the town van for members who have signed up for the conference. Members can meet at the Town Hall to carpool. They are able to take six people. Five members have already signed up. Mr. Jenny stated that he would attend if he was still able to register.

3. Mr. Bickford noted that there is additional training, the 2014 Local Officials Workshop that will be presented by New Hampshire Municipal Association's staff attorneys on Thursday, May 1st, 2014, at the Littleton Opera House. This workshop will provide elected members with tools and information to effectively serve their community.

4. Mr. Woodruff provided members with an excerpt regarding a Supreme Court ruling on a case regarding Area and Use Variances associated with Replacement of Non-Conforming Use (Nine A. LLC v. Town of Chesterfield, 157 N.H. 361 (2008)). He provided this as additional material for members to review, understanding that the Supreme Court said that arguments that where removing non-conforming structures in a side or lake setback, and then proposing to rebuild a new structure after the non-conforming one was taken down does not necessarily mean a basis for bypassing the zoning ordinance requirement and that the statement that "we're making it better, but it's still going to be non-conforming" does not pass muster.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:19 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant