

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

Regular Meeting

June 4, 2014

Minutes

Present: Members: Bob Stephens, Russ Nolin, Bob Zewski, Ken Bickford
 Alternates: Jerry Hopkins, Richard Jenny, Nick DeMeo
Excused: Member: Joe Crowe
 Alternate: Paul Onthank
Staff Present: Town Planner, Bruce W. Woodruff Administrative Assistant, Bonnie Whitney

I. Call to Order

Mr. Stephens called the meeting to order at 7:00 PM and introduced the members of the board to the public. Mr. Stephens appointed Richard Jenny to sit on the board with full voting privileges in place of excused member Joe Crowe.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of May 21, 2014, as written, seconded by Mr. Bickford, carried unanimously.

IV. Hearings

1. Continuation of Public Hearing - Judith & Robert Trautwein(160-5)(8 Garwood Lane)
 Variance from Article III.B (4)

Mr. Stephens stated that this is a request for a variance from Article III.B(4) for the construction of a residence with 50' of a perennial stream.

Nicol Roseberry with Ames Associations represented the Trautwein's. She noted the board had conducted a site walk earlier today and that members are now familiar with the property. She gave a brief recap of the existing conditions. There are two dwellings which are located in the sideline setback. The southerly residence is also located in the shoreline setback and the northerly residence is also located within the 50' setback from the stream. She noted the existing dwellings, building envelope, setback lines from the stream, lake and cemetery and the proposed improvements to the site. Ms. Roseberry answered any questions from the board.

Mr. Nolin questioned the approximate square footage of the existing dwellings and the square footage of the proposed dwelling. Ms. Roseberry stated the dwelling depicted as Residence #1 and #2 are 1,040 sq. ft. and 800 sq. ft. respectfully for a total of 1,840 sq. ft. and the proposed residence is 3,600 sq. ft. Mr. Nolin questioned if the proposed dwelling is a single story or two story building. Ms. Roseberry stated she believes it is a two story.

Mr. Bickford noted his concern with the close proximity of the northern corner of the proposed dwelling to the stream, questioning if her client was flexible in changing the foundation at that point?

Ms. Roseberry stated that she would have to confirm that with her client noting that she hasn't been able to talk with them this evening between the site walk and the hearing. Members had concerns with both the corner of the proposed residence as well as the proposed garage, the runoff from the dwelling into the stream and how you could construct a home and foundation that close to the stream without disturbing the stream. Ms. Roseberry stated there is a proposed catchment system for the runoff from the house and that the construction would be completed using best management practices. Members questioned how the town could monitor such construction. She stated that they would have to rely on someone stating that they would do it the best they can using best management practices and if it was not then it would be an enforcement issue. There was a discussion and suggestion that the applicant move the proposed residence and dwelling further away from the stream. It was noted if the applicant was willing to move the proposed dwelling and garage further back from the stream, it would require an amended plan and application.

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

Mr. Stephens asked if there were any other questions from the board.

Ms. Roseberry asked for a continuance of the hearing to confer with her client based on some of the concerns expressed by the members this evening, and possibly coming back with an amendment to help alleviate those concerns.

Motion: Mr. Stephens moved to table the application for Judith & Robert Trautwein, (160-5) and to continue the public hearing until June 18, 2014, seconded by Mr. Nolin, carried unanimously.

Mr. Stephens stated that there were two (2) additional applications for this same property, a request for variance for the construction of a residence with two kitchens, resulting in two dwelling units and a special exception. Mr. Stephens commented that they could open both of these hearings as they don't relate to the footprint of the building and the issues noted in the prior hearing.

2. Continuation of Public Hearing - Judith & Robert Trautwein(160-5)(8 Garwood Lane)
Variance from Article III.A

Mr. Stephens stated that this was a request for a variance from Article III. (A) for the construction of a residence with two kitchens, resulting in two dwelling units where the minimum lot area requirement and shore frontage are not met.

Nicol Roseberry with Ames Associations represented the Trautwein's. She noted that in the previous hearing they discussed the existing improvements on the property, stating that there are two full residences on the lot. It has been that way since its development in the late 1940's. This was an aspect for the current owners when they purchased the property in 1984. At that time it was their understanding that would be a continued amenity for the property. During the process of developing the property it was discovered that both the local and state requirements prohibited their proposal. Therefore they are seeking a variance to allow them to continue to have two kitchens, one in the main part of the house and a kitchenette in the guest wing of the house. Ms. Roseberry stated that at the prior hearing it was suggested that if the board were to grant the variance they could place a condition that if the property were sold to a party outside of the family, that that kitchenette would be removed, noting that her clients have stated that would be a condition that they would be more than happy to comply with.

Mr. Stephens stated for the record that the definition of a second kitchen is a cooking element. You can have a refrigerator and a sink, but when you put a stove in there or cooking facilities, then that is what defines a second kitchen, or second dwelling unit. Mr. Woodruff expanded further stating that the only way a Code Enforcement Officer can determine if there is a full kitchen is if there is: A, a gas hookup for a stove, or B, 220 volt hookup for a stove.

Mr. Bickford questioned if there will be a new leaching field. Ms. Roseberry stated yes there will be a new septic field, and that the state bases it on the number of bedrooms.

Mr. Jenny commented that there are two existing structures which are about 1,800 sq. ft. and they are proposing one structure of 3,600 sq. ft. He feels that while they cannot negate all of the issues of the first variance request, they could make it a lot more desirable by making this a single family residence and moving the structure further away from the stream. He questioned the need to have two dwelling units. Ms. Roseberry replied the request was based on what they have there now, what they have come to have as the use of the lot and the way in which they would like to continue it, understanding that they would like to make it one structure. There was a discussion regarding the interior layout of the dwelling. If there would be a separate entrance for each of the units and what would prevent them from making them into separate units, or a rentable unit. It was noted that the board could place a condition on the approval that if the property were ever to be sold to a party that was not a family member that they would need to remove the second kitchen. The board cannot restrict the applicant from renting their property. There was further discussion about the layout having an open space in between the main dwelling and the guest wing and no provision for the appliance to install a "party wall" allowing these to be separate independent dwelling units.

Mr. Stephens opened the hearing for public input at this time. Abutter Jim Burns stated once again that he has known the Trautwein's for 30 years and they are good friends in neighbors. He spoke in favor of the board approving their requests for variances and the special exception.

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 granting the variance at 7:39 PM and came out of deliberative session at 7:46 PM.

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

Motion: Mr. Bickford moved to grant the request for a variance from Article III.(A) for Judith & Robert Trautwein, Tax Map 160, Lot 5, subject to the following conditions: 1) Upon sale of the property to a non-family member, 1 of the 2 kitchens must be removed; 2) This be a single family home only and that there shall not be a party wall between the two living areas; 3) This approval is contingent upon the granting of the prior request for relief for the applicant from Article III.B(4) and that the Notice of Decision be recorded at the Carroll County Registry of Deeds, and further, to 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. Zewski, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford, Jenny) and none (0) opposed.

Mr. Stephens noted the right to file a motion for rehearing in accordance with NH RSA 677:2 would begin tomorrow.

3. Continuation of Public Hearing - Judith & Robert Trautwein (160-5)(8 Garwood Lane)
Special Exception from Article VI.E

Mr. Stephens stated that this is an application for a special exception from the requirements of Article III.B(6) in which the applicant is proposing the construction of a footpath and walkway/stairs over the bank to provide access to the waterfront within the 50' shoreline setback.

Nicol Roseberry with Ames Associations represented the Trautwein's. She briefly recapped the existing improvements along the waterfront stating the property currently has a set of concrete and stone steps that lead down to the waterfront. They are narrow and not easily travelled over. Additionally if the variance is granted for the proposed residence would be in the location of the existing walkway. They are proposing safer and updated stairs for access down to the dock and beach area. These stairs would be wooden and be constructed over the bank, not into the bank. The existing stairs would be removed. Ms. Roseberry answered any questions from the board at this time.

Mr. Nolin questioned if the proposed improvements required state approval. Ms. Roseberry noted that they it does and that it does and that it would be part of the application for the entire parcel to the DES. The applicant must obtain all necessary state and local permits for the project.

Mr. Stephens asked if there were any additional questions.

Mr. Woodruff stated that the MZO Article III.B(6) gives the ability of property owners to ask the ZBA for permission to have the right to construct either a walkway or a stairway down to a water body if they meet certain criteria in any setback, whether it is a side setback or a lakefront setback, which the reason why the applicant is here today. Mr. Woodruff referred to his staff memo stating that it is staff's recommendation that the Board grant the special exception, placing a condition that any necessary Shore Land and wetland Permits be submitted to the Development Services Office at time of Building Permit application.

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

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 granting the variance at 7:51 PM and came out of deliberative session at 7:57 PM.

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

Motion: Mr. Bickford moved to grant the special exception for Judith & Robert Trautwein, Tax Map 160, Lot 5, for access & egress within setbacks subject to the condition that any required shoreland and wetland permits be submitted to the Development Services Office at the time of Building Permit Application, and further, to 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, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford, Jenny) and none (0) opposed.

Mr. Stephens noted the right to file a motion for rehearing in accordance with NH RSA 677:2 would begin tomorrow.

4. Christopher J. Sturgeon (135-18.1) (22 Moultonboro Neck Road)
Special Exception from Article VI.C

Mr. Stephens stated that this was an application for a special exception for relief from Article VI. C to allow construction and mixed use facility (existing business and proposed residential apartment). There was a question regarding the article in which they are seeking relief, if it was VI.C or VI.E. Mr. Woodruff stated that the ability to get the special exception is contained in Table of Uses in Article VI.C and the criteria are in Article VI.E.

Chris Sturgeon presented his application for special exception. Mr. Sturgeon briefly described the proposed 40' x 60' addition to the rear of the building. The first floor will be used as service/storage area for the existing auto repair garage and the second floor as an apartment. Mr. Sturgeon answered any questions from the board.

Mr. Woodruff noted that staff recommends granting the special exception. He gave a brief background on this that this is another case where the table of allowed uses identifies mixed use, which is a commercial use and residential use in the same structure, in the residential area. It must meet the criteria as in the previous hearing. Mr. Woodruff reviewed his staff memo giving the background history of the property, the necessary approvals required and suggested conditions if the board should grant the special exception. It was noted the proposed improvements will require site plan amendment approval by the Planning Board.

Mr. Nolin referred to the criteria for the granting of a special exception, specifically relating to fire protection, noting given the use of the building as a garage, he questioned what kind of fire suppression system they have to facilitate the safety of the proposed apartment. There was a brief discussion regarding this and it was noted that one condition of approval could be that the applicant meet with the Fire Chief for input regarding Life Safety 101 and that they meet all recommendations of the Fire Chief. Members were in agreement with this. Members also discussed access to the rear of the building in the event of an emergency asking if they could stripe the parking lot with necessary fire lanes. Mr. Sturgeon stated that the parking lot in front of the building is paved, but that the rear is gravel. It was noted that they could mark the fire lane with signage.

Mr. Stephens opened the hearing for public input. Abutter Shirley Clifford noted that she has no problem with the proposed addition but noted her concerns with fire safety if this is to be a rental unit.

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 granting the variance at 8:14 PM and came out of deliberative session at 8:23 PM.

Motion: Mr. Zewski moved to grant the request for Christopher J. Sturgeon (135-18.1) for a Special Exception from Article VI. A with the following conditions: 1) that an appropriate fire lane is marked in maintained in accordance with any recommendations required by the Fire Chief. 2) the applicant must meet all recommendations of the Fire Chief regarding Life Safety 101. 3) proof be submitted that the septic system has the capacity to serve the mixed use or that a new system be required and that the well water meet any and all regulatory thresholds that may apply for both business and residential use, and to 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, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford Jenny) and none (0) opposed.

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

5. Amanda J. Verbanic & William J. Taylor, II (169-68)(17 Whittier Highway)
Variance from Article VI.F (2)

Mr. Stephens stated that there are two applications for Amanda J. Verbanic & William J. Taylor. The first variance request is to obtain relief from the front, side and rear setbacks. The proposal is for the replacement of an existing non-conforming structure that is located 7.2 ft. from the rear property line, 22.5 ft. from the side property line, and 40.2 ft. from the front property line, with a new building to be

located 7.5 ft. from the rear property line, (25 ft. required), 25.5 feet from the side property line, (25 ft. required) and 37.5 ft. from the front property line, (50 ft. required).

David M. Dolan, of David M. Dolan Associates, P.C. agent for the applicants, Amanda Verbanic and William Taylor, who were present this evening, presented the application for variance. Mr. Dolan stated the property is known as the Center Harbor Diner and the proposal is for the replacement of an existing non-conforming structure. He briefly described the lot, location, size, current development, and use of the site. Mr. Dolan gave a background of the property stating the diner has been there since the 1960's. Mr. Dolan referred to the Existing Conditions Plan which shows what is there now and the proposed plan. He noted the wetlands that have been identified on the property and the setback line that is shown on the plan in blue. The red line on the plan is the 50' road front setback and the rear and sideline setbacks are shown at 25'. The property is serviced by municipal sewer and is shown on the plan. There is a well located in the crawl space of the building. The property is located in Commercial Zone A and is also subject to the Ground Water Protection Overlay District requirements and the wetlands overlay district. Mr. Dolan noted the small conforming area on the site. The existing lot coverage is 48.44% and the proposed is 43.64%. The existing Diner is 3,153 sq. ft. and the proposed new Diner is 3,368 sq. ft. They have received an NH DES Wetlands Bureau permit dated December 30, 2013 for the installation of the proposed culvert and a NH DOT Driveway Permit dated June 16, 2012 for two controlled access to the lot. They have applied to the Planning Board for site plan review and a conditional use permit and are on their agenda for June 25th. Mr. Dolan reviewed each of the criteria for the granting of a variance. Mr. Dolan answered any questions from the Board.

Mr. Woodruff commented that the use of the diner (restaurant) is an allowable use by right in the zoning district. The structure is grandfathered as it was constructed long before zoning was enacted. Mr. Woodruff referred to his staff memo in which he gave the background on the subject property, noting that he recommends granting the setback variance for the front, side and rear setbacks as requested. He noted that if the Board should grant the variance request, he recommend that the variance have the following conditions; 1. That a foundation certificate be prepared by a licensed land surveyor be submitted to the Code Enforcement Officer for review at building permit application; 2. That the Notice of Decision be recorded in the CCRD.

Mr. Nolin commented that on the plan there is an existing shed with a notation that there is a fenced area over the property line. Mr. Dolan stated that it is existing and will remain, as will the area noted that is apparently used as snow storage by the abutting property onto the subject lot.

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

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 granting the variance at 8:52 PM and came out of deliberative session at 8:56 PM.

Motion: Mr. Bickford moved to grant variance for Amanda J. Verbanic & William J. Taylor, II (169-68) for relief from Article VI.F.2 with the following conditions: that a foundation certificate survey be submitted at the time of application for building permit to the Office of Development Services and that the Notice of Decision to be recorded at the applicants expense at the Carroll County Registry of Deeds, 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, seconded by Mr. Zewski, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford Jenny) and none (0) opposed.

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

6. Amanda J. Verbanic & William J. Taylor, II (169-68) (17 Whittier Highway)
Variance from Article IX.D

Mr. Stephens stated that this was the second application for Amanda J. Verbanic & William J. Taylor for relief from Article IX.D to permit the replacement of an existing non-conforming structure that is located: 19.0 feet from a wetland, with a new building to be located: 20.9 feet from a wetland, (50 foot required; 25 foot vegetative buffer required). Mr. Stephens noted that the Board has heard the applicant's information regarding the proposed development of the site, asking if any member had any need to hear additional comments or input. Members stated that they were all set.

Mr. Woodruff commented that there is a 50' buffer to the wetlands as they are greater than 20,000 sq. ft. contiguous. The Planning Board has the authority over whether or not something happens in the first 25' of that buffer in their review of a Conditional Use Permit at site plan review time, but the applicant needs a variance from the ZBA to allow construction within that second 25', the closest 25' to the wetlands.

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

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 granting the variance at 9:01 PM and came out of deliberative session at 9:04 PM.

Motion: Mr. Zewski moved to grant variance for Amanda J. Verbanic & William J. Taylor, II (169-68) for relief from Article IX.D with the following conditions: that a foundation certificate survey be submitted at the time of application for building permit to the Office of Development Services and that the Notice of Decision to be recorded at the applicants expense at the Carroll County Registry of Deeds, 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, seconded by Mr. Nolin, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford Jenny) and none (0) opposed.

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

Mr. Woodruff asked if one notice of decision combining both variance requests for Amanda J. Verbanic & William J. Taylor, II (169-68) would be okay. The Chairman stated one notice would be fine.

V. Correspondence

VI. Unfinished Business

1. Broadband – Mr. Woodruff briefly updated the Board stating that the Broadband working group has had several meetings. They are currently working with Mike Blair from the UNH mapping department in mapping the town and seeing where broadband is currently available, not available as well as the speed. They started a campaign that will run through Labor Day in which individuals can go to a web site (iwantbroadbandnh.org) [click here](#) to take a Broadband Survey and speed test. Mr. Woodruff stated that when completing the survey it is important to spell out Moultonborough completely with the ugh at the end. This will make collecting the data quicker and more accurate for UNH. He encouraged all to go onto the website and take the survey and speed test.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:05 PM, seconded by Mr. Bickford, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant