

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

Regular Meeting

June 18, 2014

Minutes

Present: Members: Bob Stephens, Russ Nolin, Bob Zewski, Ken Bickford
 Alternates: Jerry Hopkins, Nick DeMeo
Excused: Member: Joe Crowe
 Alternate: Paul Onthank, 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 Nick DeMeo 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. Nolin moved to approve the Zoning Board of Adjustment Minutes of June 4, 2014 as written, seconded by Mr. Zewski, carried unanimously.

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment On-site Minutes of June 4, 2014 for the Garber property (130-48) seconded by Mr. DeMeo.

Mr. Hopkins asked that the minutes be amended to reflect that the on-site started at 4:23 and not at 4:30, therefore both he and Mr. Jenny were on time arriving at 4:30. Motion carried unanimously with Mr. Stephens abstaining.

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment June 4, 2014 On-site Minutes for the Trautwein property (160-5) seconded by Mr. DeMeo, carried unanimously.

Mr. Stephens stated for the purposes of efficiency that he was going to go a little out of order on the agenda, bring items 3 and 4 under hearings up prior to hearings 1 and 2.

IV. Hearings

3. Continuation of Public Hearing for William Garber (130-48) (Gansy Lane)
 Variance from Article III.B (4)

Mr. Stephens stated that the board was in receipt of a letter submitted by Regina A. Nadeau, Esq. on behalf of Mr. William Garber requesting to continue the two hearings for one month as she was only recently retained by the Garber's to assist them in their applications and she requires additional time to supplement the record.

Motion: Mr. Nolin moved to continue the public hearing for the request for a variance for William Garber (130-48) to July 16, 2014 and further requested that the Conservation Commission be notified asking for their comments regarding this application, seconded by Mr. Zewski, carried unanimously.

4. Continuation of Public Hearing for William Garber (130-48) (Gansy Lane)
Special Exception from Article III.B (6)

Mr. Stephens noted once again the request for continuance submitted by Attorney Regina Nadeau.

Motion: Mr. Bickford moved to continue the public hearing for the request for a special exception for William Garber (130-48) to July 16, 2014 seconded by Mr. DeMeo, carried unanimously.

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

Nicol Roseberry from Ames Associations represented the Trautwein's. She stated that in continuing on from the last meeting where they had discussed possibly trying to modify the footprint of the proposed residence so that it would be further from stream and also talked about the construction process and making sure that they were safe guarding the stream water. She has interacted with her clients, the Trautwein's, Joanne Coppinger, P.E., a contractor and the architects with a modified foot print. They have eliminated the proposed one car garage so they no longer have the encroachment on the slope. In addition the foundation wall on the north side that is parallel to Clark's Landing that was originally proposed at 29.7 feet in length which brought it to 3.4 feet from the stream has been reduced to 28 feet and the foundation wall has been reduced to 26 feet, making the northern most corner of the proposed residence 7 feet from the stream, instead of 3.4 feet. She noted that there will be 2 feet of the structure cantilevered along the east side. She stated that Ms. Coppinger was comfortable drafting an Erosion Control & Sediment Control plan for the project but was unable to have it prepared for this evening. Ms. Roseberry stated that her client would be agreeable to a condition of approval that requires a submission of an Erosion Control & Sediment Control plan to the Town Planner or Code Enforcement Officer for their review and approval prior to any building permit being issued. Ms. Roseberry stated that all existing grades would also be proposed grades. They are not going to be regarding between the house and the stream.

Mr. Stephens commented that he had a questioned relating to the Erosion Control & Sediment Control plan, asking if there was a standard that is recognized and tailored to that specific location. She commented that it was to the 50 year storm event. Mr. Stephens noted that the original concern had to do with disturbance during construction. He then asked the Planner how they would be able to evaluate an erosion plan. Mr. Woodruff stated the way the Storm Water Pollution Prevention Plan (SWPPP) is put together, the criteria is the 50 year storm, however the concern of the board is that the existing retaining wall and the stream bank not be disturbed during construction. Those are two different things. That would be one of his suggested conditions to the board, should they grant the variance. Mr. Stephens second question was in the plan presented to the board at the previous hearing they had proposed to remove the existing access that cuts across the stream with a culvert and notated "Discontinue and Revegetate Existing Driveway" and had now been put back in a shown as "Maintain Existing Access" and he asked if that had been put back in. Ms. Roseberry commented that they had said that they would revegetate that area, but that the access would always remain. Ms. Roseberry stated the reason for putting that there was that there currently room under the existing residence to store things and she suggested to her client that if their strong desire was to have some way to park a vehicle in under cover, should they leave/maintain the existing access from Clark's Landing. Members discussed this at length with some members feeling that it would cause more disturbance to the banking and stream if they were to remove the rock based crossing. The board was in agreement if they were to grant the variance that they place a

condition that restricts access underneath to foot traffic only, that there being no vehicular traffic. Ms. Roseberry stated that her client would be okay with such a condition.

Mr. Stephens opened the hearing for public input at this time, 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. 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 7:57 PM and came out of deliberative session at 8:07 PM.

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

Motion: Mr. Zewski moved to grant the request for a variance from Article III.B (4) for Judith & Robert Trautwein, 8 Garwood Lane, Tax Map 160, Lot 5, subject to the following conditions: 1) That a Shore land Permit be submitted to the Development Services Office at time of Building Permit application; 2) The owner produce a foundation certificate from a licensed NH Surveyor at the time of Building Permit Application; 3) That the current plat (April 24, 2014) with a revision date of June 16, 2014, labeled access to Clark's Landing restricting vehicles from using and the area to be revegetated prior to the start of construction; 4) The existing retaining wall and stream bank not be disturbed during demolition; 5) A SWPPP be submitted prior to the issuance of a Building Permit, 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. Bickford, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford, DeMeo) 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.

2. Continuation of Public Hearing Karen G. Walsh Realty Trust (226-1) (51 Garnet Point Road) Variance from Article III.B (4)

Shannon Alther from TMS Architects was present representing the Karen G. Walsh Realty Trust. He noted Patrick Walsh, Karen's husband was present in the audience this evening. Mr. Alther stated that they were scheduled for a hearing on May 7th and had requested a continuance as they were in the process of working with NHDES regarding Shore land and Wetlands applications. Mr. Alther described the project, noting the lot is over 5 acres in size. There are three buildings on the site, a boathouse, a bunkhouse and the existing cottage. They have a couple of options on how they can address the bunkhouse. The proposal is to remove the existing bunkhouse and replace it with a smaller pavilion. They are reducing the size of the existing building and moving it a little bit further away from the water. It will become a pavilion which removes the bunkhouse opportunity that was there previously, they are reducing the volume of the building itself, and moving it further away from the water. The pavilion will be a three sided open building which will give the property owner better visibility from the house, over the beach to the boat house. They feel that the adjustment that they are looking at will make the property safer and help out with the owners in terms of how they enjoy the property. Mr. Alther commented that they are reusing a lot of the materials in the current bunkhouse in the new building. Mr. Alther answered any questions from the board.

Mr. Stephens commented that the site is very large and questioned what the constraints were that would not allow them to move the proposed pavilion back to meet the required 50' setback while still maintaining the open view of the lake. Mr. Alther said they had talked about that and their concept was the proximity to the beach and the water was really nice. The building itself has seen some age to it so

they'd like to fix it up. Their thought was they could make it a little bit smaller, still meeting the needs of the applicant. The question is that there are some pretty nice trees along that area that helps separate the main house along that run that are deciduous and they would like to keep.

Mr. Hopkins stated he had gone to the site today and there is a large area that is south west of the proposed pavilion that has had a lot of trees cleared, back towards the garage. He asked what the reason is for that. He noted they talk of saving trees but there are a lot of stumps there. Mr. Alther commented that the previous owner had had this property in their family for a 100 or so years and she hadn't done a lot of upkeep further up into the lot so they did a little thinning. They did get the appropriate approvals for that. There were some areas of old spruce and pine trees that needed some work so part of that clearing was to get some more sunlight to that area and open it up.

Mr. Bickford noted he had some of the same concerns as stated by Mr. Stephens. He asked why they could not put the pavilion into a conforming area. Mr. Alther replied in theory they could move it up there. Their thought was that it is a unique property. They could leave the bunkhouse right where it is, but it has some issues to it and the concept is that it's nice to have it in that location and it does have a nice feel to the property, it gives it a nice line along the beach. They thought that this was a good option to pull it back from the water a little bit, make a smaller building and reduce the volume. They are moving it to the east about 7-8 feet and southeast about 2 ½ -3 feet.

Mr. Woodruff referred to his staff memo noting the attached map which shows the 50 foot shore land setback. He stated the most important thing to be considered here is what the board has already settled on is that once the existing building is demolished, any grandfathering is not there anymore, and absent any compelling reason of why this structure could not be located back behind the 50 foot setback is really the crux of the matter. It does get to the reasonable use of the property and the reasonable use of the property may be constructing a pavilion type structure that meets the 50 foot building setback if it's possible and gives the same kind of views that you would have had before. The lot is very large, it is over 5 acres and unless there are other conditions such as wetlands, steep slopes or a stream, it does seem to have a very large building envelope.

Mr. Stephens opened the hearing to the public. Abutter Richard Brown, 17 Winacres Road commented that he doesn't see that there is a particular hardship that would allow for a variance of this type and doesn't see any reason why the pavilion cannot be moved back 50 feet to be in conformance.

Mr. Stephens noted for the record that the board was in receipt of a reply from Abutter Doris Boulard, 14 Garnet Point Road stating that she is not in favor of the proposed construction of a new pavilion building to be built 19 feet 3 ½ inches from the lakefront setback.

Mr. Alther responded to the comment about the fact that they could potentially move that up fast the fifty, and the reason they came before the board tonight is that the opportunity to leave that structure where it is is a probability. So depending on the outcome tonight they would have that opportunity to maintain that and they felt that since it was a unique enough property that they wanted to come in and get the boards reaction.

Mr. Stephens replied that to the point of the Town Planner, when a non-conforming structure is removed, effectively it never existed, from the perspective or the evaluation that the board has to make. And the challenge is that the lot may very well dictate that a variance is necessary because of its unique characteristics, not just because we've got something there and we'd like to keep it there. Unfortunately that isn't the way the Town's Ordinance reads and therefore the variance request comes forward.

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 8:29 PM and came out of deliberative session at 8:42 PM.

Mr. Alther commented that the board had mentioned there were two options, one is leaving it, rehabbing it as it is and the second option is to move it past the 50 foot setback. He thinks there is a third option which is to reduce the impact or footprint within the 0-50 foot setback which is why they are there.

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

Motion: Mr. Bickford moved to deny the request for the Karen G. Walsh Realty Trust (226-1) (51 Garnet Point Road) for a variance from Article III. 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. Zewski.

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

The Board took a short break from 8:47 – 8:50.

V. Correspondence

1. Mr. Stephens noted the board was in receipt of a Request for Motion for Re-hearing for the May 7th, 2014 denial of a variance from Article XII.V(B) of the Zoning Ordinance - Zaremba Program Development, LLC – Tax Map 52, Lot 18, received June 6, 2012, filed by John H. Sokul, Jr., Esq. Board members reviewed the request for Rehearing.

The Board discussed the request and based on their discussion, a majority of the members thought that there may be reasons for granting the rehearing request, making the following motion:

Motion: Mr. Stephens moved to grant the request for rehearing as requested in the Motion for Rehearing relating to the May 7th, 2014 denial of a variance from Article XII.V(B) of the Zoning Ordinance - Zaremba Program Development, LLC – Tax Map 52, Lot 18, seconded by Mr. Zewski, motion passed by a vote of four (4) in favor (Stephens, Zewski, Bickford, DeMeo), none (0) opposed and one (1) abstention (Nolin).

Ms. Whitney noted that the applicant must submit an application for re-hearing with the necessary fees and all submission documents within the required time for the hearing on July 16th. Mr. Woodruff noted this was addressed in the ZBA Policies, Article XV Motions for Rehearing.

VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 4th, 2014 granting of a special exception from Article III. B (6) of the Moultonborough Zoning Ordinance for Judith & Robert Trautwein (160-5)(8 Garwood Lane).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on June 4th. There were no changes made to the draft.

Motion: Mr. Zewski moved to direct the Chairman to sign the Notice of Decision as written, for Judith & Robert Trautwein (160-5)(8 Garwood Lane) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Bickford, carried unanimously.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 4th, 2014 granting of a variance from Article III.A for Judith & Robert Trautwein (160-5)(8 Garwood Lane).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on June 4th. There being no changes made to the draft.

Motion: Mr. Bickford moved to direct the Chairman to sign the Notice of Decision as written, for Judith & Robert Trautwein (160-5)(8 Garwood Lane) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, carried unanimously.

3. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 4th, 2014 granting of a special exception for Christopher J. Sturgeon (135-18.1)(22 Moultonboro Neck Road).

Motion: Mr. Zewski moved to direct the Chairman to sign the Notice of Decision as written, for Christopher J. Sturgeon (135-18.1)(22 Moultonboro Neck Road) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Bickford, carried unanimously.

4. Review and possible authorization for the Chair to sign the formal Notice of Decision for the June 4th, 2014 granting of two (2) variances from Articles VI.F(2) & IX.D for Amanda J. Verbanic & William J. Taylor, II (169-68)(17 Whittier Highway).

Motion: Mr. DeMeo moved to direct the Chairman to sign the Notice of Decision as written, for Amanda J. Verbanic & William J. Taylor, II (169-68)(17 Whittier Highway) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, carried unanimously.

5. Mr. Stephens updated the members on two recent court decisions regarding the ZBA Madison case and the Planning Board Rock Pile case.

6. Mr. Woodruff noted that the Code of Conduct training for everyone who is elected to a town position or appointed to a town position that is scheduled for Monday, June 23rd at 1 PM has been relocated to the Town Hall. Any member or alternate who has not already attended prior sessions of this training must attend this Code of Conduct training.

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:44 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant