

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

**Regular Meeting**

**August 20, 2014**

**Minutes**

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

**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.

**II.      Pledge of Allegiance**

**III.     Approval of Minutes**

**Motion:**         Mr. Nolin moved to approve the Zoning Board of Adjustment Minutes of August 6, 2014 as written, seconded by Mr. Wakefield, carried unanimously.

**IV.     Hearings**

1.       Edward John, Jr. & Jane Smits (132-54) (77 Richardson Shores Road  
          Variance from Article VII. E (1) and III. B. (3)

Mr. Stephens stated that this was an application for a variance from Edward John Jr. & Jane Smits for 77 Richardson Shores Road Tax Map 132 Lot 54. This is a request for relief from Article V11.E (1) and III.B. (3). To construct an addition to an existing residence which will result in greater than the 20% expansion that is currently stipulated in the ordinance and a portion of the structure will be located within 20' setback minimum of the ordinance.

John Smits presented his application for variance for a proposed addition to their house. It's located in the Toltec Point Richardson Shores neighborhood association on Lake Winnepesaukee. Mr. Smits stated that he knows that Mr. Crowe was out to look at the property but wasn't sure if others have done the same but he said that he had a small cottage that was constructed in 1959 and like many of the houses in the neighborhood the property is kind of skewed and most of the houses are skewed on the properties to access the most vision prospectus of the lake available. Mr. Smits stated that the diagram shows a scan of the lake. It showed the lake with the dock and going up to the house. The diagram shows the leaching field for the septic and that side of the house also has a fire place, chimney for the heating system and a propane tank located. He stated that his proposed addition is located to the south of the house. It will extend approximately to the end of the ledge rock before it drops off. Because of the angle of the house and the property line there will be a small portion of the additional that extends over the 20' side setback. It's approximately 20 sq. feet triangle in shape and it reaches a point of 16'8" off the side lot line. The back lot line he proposes to angle the addition off to follow the existing set back that is maintained by the present house which is about 42' off of the lake instead of the 50'. That's the reason for the skewed look on the addition so that they stay within the current setbacks of the house and not

exceed the limits that are on the house now. He stated that this location is really the only area that it has space to go. He stated that there is an abundant amount of trees on the lot they would only be taking out the trees that they need to for the addition and he's sure that they will meet the criteria for the town for trees. They will have a septic system design done. Mr. Smits stated that they own about 30,000 sq. feet of land on the other side of the road. They will have a design done for future use if their current system should fail. Mr. Smits felt that it was important that he come to the town first to see what the board's reaction would be about his proposal before he moves forward. He stated that what he is proposing is not out of character in this neighborhood. Mr. Smits noted that he has a signed letter of consent from his neighbor directly to the north Kevin & Carol Cuarriello. His neighbor Mr. Anderson to the south is attending the meeting and will have some questions for the board. Mr. Smits asked the board if they had any questions.

Mr. Stephens stated that the letter that was handed to the board effectively is just a letter indicating approving if you will.

Mr. Stephens as if any board members had any questions. Mr. Crowe stated that he was out at the site today and had no questions.

Mr. Stephens asked the Town Planner Mr. Woodruff for his comments. Mr. Woodruff stated that he thinks it's important to note a couple of things on this application that the applicant didn't mention. One is that for some reason several lots along the road are two-part lots that he thinks is because of the nature of the right of way that is an easement, so that this a very large lot and there is only a garage on the opposite side of the road. There are several lots like that in this neighborhood. The second is that the portion of the proposed addition that lies in the lake front setback, but no closer to the lake boundary than the existing structure, may be constructed without a variance from the board per Moultonborough's Zoning Ordinance Article VII.E(4) and that reads as follows: "Additions to nonconforming single-family structures, that were made nonconforming by a zoning amendment that changed the front, side or rear setback requirements, shall be permitted within the front, side and rear setback areas provided that the addition is no closer to the lot line than the existing nonconforming structure and no closer than ten (10) feet from the lot line." Mr. Woodruff stated that what you see on the plan in that regard is okay without coming before the board. He stated that what is before the board is the addition that is proposed that's larger than the 20% maximum size allowed. Roughly between 195 sq. feet (which is the maximum of the 20%) is all that is allowed by the ordinance. What is proposed is 808 sq. feet and a side setback variance request of that triangular corner of the addition proposed that would result in a 16'8" setback rather than the 20' required at that corner. The bulk of the addition being proposed is within the buildable envelope. Also note that the proposal does require subsequent approval by the Shore land Bureau of DES and that the applicant did mention that he will need a new septic system design before getting a building permit should the board grant the application. Finally, Mr. Woodruff stated that the applicant appears to have laid reasonable justification for each of the five criteria.

Mr. Woodruff stated that the staff recommendation was for the Board to grant the variance request and recommends that the variance have a condition that the required Shore Land Permit and new approved septic design be obtained and submitted to the Development Services Office at time of Building Permit Application to the Code Enforcement Officer.

Mr. Stephens asked if the members of the audience had any questions. Mr. Lindsey Anderson spoke as an abutter on the south side of the applicant and stated that he has no objection at all but his major concern is that it ever influence his side if some day he wanted to advance his side towards Mr. Smits property line. Would the fact that he's come within the 20' setback.

Mr. Stephens stated that the property line is the property line and the applicant is seeking relief to be able to encroach into the setback to the property line approximately 3'4", but he stated that Mr. Anderson still have the 20' on his side and if he wished to encroach on in that 20' he would have to come before the board. It would be the same as Mr. Smits and has no impact on Mr. Anderson.

Mr. Anderson then asked is there a large number of trees being taken down? Mr. Smits stated that it would be approximately 3 or 4 trees. Mr. Anderson was concerned that a large tree on the corner would be coming down and Mr. Smits stated that no, it was not being removed.

Mr. Nolin asked Mr. Woodruff on the trees within the 50'; doesn't the state have a certain percentage that goes along with the permit. Mr. Woodruff stated that yes there is a tree count that is done in 50' x 50' grid patterns that will all be reviewed. Possible replanting may have to occur, but they won't know that until he does make the application with DES.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted that there were none. The board went into deliberative session to discuss each of the criteria for granting the variance at 7:20 PM and came out of deliberative session at 7:26 PM

There was no further input from the Board or public. The voting members were Stephens, Nolin, Crowe, Bickford and Zewski).

**Motion:** Mr. Crowe moved to grant the request for a variance from Article VII (E) (1) and III(B)(3) for Edward John, Jr. & Jane Smits, 77 Richardson Shores Road, Tax Map 132, Lot 54, and to close the public hearing. Mr. Crowe also moves 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, in addition to that he would requests that a Shore Land Permit be obtained by DES and that a septic system design be filed with the Code Enforcement Office at the time of permitting, seconded by Mr. Bickford, motion passed, five (5) in favor (Stephens, Nolin, Crowe, Bickford and Zewski) and none (0) opposed.

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

## V. Correspondence

1. Request for Motion for Re-hearing for the July 16<sup>th</sup>, 2014 denial of a variance for Zaremba Program Development, LLC on behalf of Dollar General (52-18)(929 Whittier Highway).

Mr. Stephens asked Mr. Woodruff if he had talked with Town Counsel and Mr. Woodruff stated that yes he had. Mr. Stephens stated that Town Counsel has provided Mr. Woodruff with legal information that he feels that the board should listen to. Mr. Woodruff stated that because of the unique nature of this request for a re-hearing of a second hearing that was granted by a re-hearing, that doesn't happen every day. Therefore, Town Counsel has reviewed the request and history of this application and the two Notices of Decision that have been released by the board on this, and he has proffered the board with some legal counsel which would have to be heard in executive session (non-public session) and that there are certain rules that have to be followed if you choose to hear the advice. Mr. Woodruff stated that they would have to follow the statute which is RSA 91:A particularly 91:A 3(I). The board would have to in a motion to go into non-public session call out the specific exception in 91:A 3(II), which would be consideration or negotiation of pending claims or litigation which has been filed against the public body. In this case, it was filed yesterday. A motion would also have to be made in non-public session at the end that states that the minutes are being sealed until the claim or litigation has been fully adjudicated or otherwise settled.

Mr. Zewski asked if the 2 decisions by this board were different as far as the reasons. Mr. Woodruff stated that that was correct. There was a brief discussion about what the differences between the two hearings were. It was noted that the findings were different between the two hearings.

Mr. Stephens stated that the question before the board at this point is whether or not the board feels that the information that has been provided by Town Counsel is significant enough for the board to make a motion and go into Executive Session and then reconvene here at which time the board will take action on this request.

Mr. Stephens made a motion that the Board go into Executive Non-Public Session under 91:A 3(I) and to call out the exception to the open meeting requirement contained in 91:A 3(II) which is consideration of a litigation which has been filed against the public body, seconded by Mr. Zewski. Roll call: Joe Crowe, Aye; Ken Bickford, Aye; Bob Zewski, Aye; Bob Stephens, Aye; Russ Nolin Aye. The Board went into non-public executive session at 7:31PM.

The Board came out of non-public executive session at 7:41PM on a motion from Mr. Stephens, seconded by Mr. Zewski which passed unanimously.

Mr. Zewski moved to grant the requested rehearing for Zaremba Program Development, LLC on behalf of Dollar General (52-18)(929 Whittier Highway). The motion died for lack of a second.

Mr. Bickford moved to not grant the requested rehearing for Zaremba Program Development, LLC on behalf of Dollar General (52-18)(929 Whittier Highway). The motion was seconded by Mr. Crowe. The motion passed on a 3-2 vote, with Mr. Stephens and Mr. Zewski opposed.

## **VI. Unfinished Business**

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the August 6, 2014 granting of a variance for Ed Batchelder (140-2) (144 Bean Road).

Mr. Stephen's recused himself from this discussion and Paul Onthank was seated with Russ Nolin as Chair.

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 6, 2014. There were no changes made to the draft.

**Motion:** Mr. Crowe moved to direct the Chairman to sign the Notice of Decision as written, for Ed Batchelder (140-2)(144 Bean Road) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Zewski, carried unanimously.

Mr. Stephens resumed the Chair and Mr. Onthank resumed his alternate role.

## **VII. Adjournment**

**Motion:** Mr. Stephens made the motion to adjourn at 7:48 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,  
Alison G. Kepple  
Office Secretary