

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

**Regular Meeting**

**June 17, 2015**

**Minutes**

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

**I.       Call to Order**

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the board to the public.

**II.      Pledge of Allegiance**

**III.     Approval of Minutes**

**Motion:**        Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of May 20, 2015, as written, seconded by Mr. Nolin, carried unanimously.

**IV.     Hearings**

1.       Jose & Jussara Rosa (263-90) (14 West Point Road)  
          Variance from Article III.B.3 & 4

Mr. Stephens stated that this was a request for a side property line and waterfront setback variance for the placement of an accessory structure (12' x 14' storage shed) located 15 ft. from the sideline and 30 ft. from the shoreline.

Jussara Rosa presented the application for the variance requests. Mrs. Rosa stated when she placed the shed on her property she didn't know that it had to be 50 ft. from the water and 20 ft. from the fence. When they went to get an electrical permit the Code Enforcement Officer (CEO) issued the permit and she thought everything was fine. After that she found out there was a problem with the location of the shed. She feels that where it is located is a good place for it and that it's nice and neat

Planner Woodruff gave a brief background on the lot as noted in his staff memo. The applicants did come to the CEO to ask for a building permit to construct a deck and an addition. A contractor came in for an electrical permit for the shed, which is when he learned of the shed and that it was in the setbacks. He made a condition on the building permit that the shed must be moved to comply with setbacks. There has been correspondence back and forth with regards to that. The shed has not been moved and the applicant was told that they could come to the Zoning Board and ask for relief from the ordinance while he was moving forward with the code enforcement process. If the relief is not granted the CEO is moving forward with an order before the Board of Selectmen to go to court.

The Planner strongly suggested that the ZBA ask the applicant why the shed can't be moved. There are some issues with trees and other things that the applicant has indicated to the CEO. Staff

believes that the applicant has presented an argument for four of the criteria but that more information needs to be gathered before they can make a decision on the unnecessary hardship. Should the board grant the request, staff suggests that the applicant, at the least, contact NH DES to see if they need to amend the Shoreland permit to indicate the actual position of the storage shed.

The Chairman asked how many members were able to view the site prior to the hearing. A majority of the members had viewed the site. Mr. Stephens did not see any reason why the shed couldn't be moved to the right side of the property as depicted on the plan submitted with the NH DES application submitted by the applicant. Members discussed the current location of the shed, questioning why it was not placed where it was shown on the plan approved by DES. The applicant feels that it is a better location where it is now and that it would block the view of the lake for others if it were moved to the right side of the property. This discussion went on at length with members questioning why it could not be moved back from its current location to meet the 50 ft. setback. Members were not as concerned with the sideline encroachment as there is a fence along the length of both sides of the property. Members questioned what the use of the shed was. Mrs. Rosa commented that it is a kitchen. It has a small fridge, cabinets and a counter. She was told by the CEO that she could hook water up if the location is approved.

Mr. Stephens opened the hearing for public input at this time.

Abutter Jim Salerno stated that he thinks the shed looks ok in its current location if they were to move it back to comply with the 50 ft. lake setback.

The Chair noted the board was in receipt of a letter from the West Point of Long Island Association conveying that they have no objection to the variance requested.

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 7:27 PM and came out of deliberative session at 7:45 PM.

Mrs. Rosa wanted to make certain that the board was aware that the shed was in its current location prior to getting DES approval for another location. When she put the shed in its current location she did not have any permits to put it up. She only found out the shed was in the wrong place when they applied for an electrical permit. If she had known it was the wrong place, she would never have put it there. She would never have spent the money to have it put there and then have to have it moved. In her mind she did nothing wrong when she put the shed there.

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

**Motion:** Mr. Zewski moved to deny the request for variance for Jose & Jussara Rosa, Tax Map 263 Lot 90, 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, carried unanimously.

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

The board took a 5 minute recess from 7:52 to 7:57.

2. Roman P. Legocki and Misuk Legocki (188-24) (100 Wyman Trail)  
Variance from Article III.B.4

The Chair noted that this was a request for a variance.

Christopher Boldt, Esq. presented the application for variance. He referred to his multi page narrative, along with an Existing Conditions Plan prepared by Ames Associates and a Proposed Design Plan prepared by Ames Associates. Attorney Boldt described the existing property, location and existing improvements on the site. He stated the existing house is located 22.7 feet at its closest point to the Lake, within the 50 foot setback. He stated the lot is unique as it is impacted by the 50 foot setback on both the North and South sides of the Property, and it is impacted by the 25 foot setback from the road. There is a single story dwelling, two sheds and a detached garage on the existing site. Mr. Boldt went onto explain that there was only one area where the septic system could be placed to meet the applicable regulations of the DES and the Town. The proposal is to remove the existing single story, 3 bedroom dwelling and reconstruct a two story, 3 bedroom dwelling with an attached garage. The proposed construction must be approved by DES for a Shoreland Impact Permit. Mr. Boldt stated that after the installation of the Proposed Residence, septic system and driveway, the Property will have 27.4% impervious coverage.

Ms. Roseberry gave a brief overview regarding the Shoreland Protection, which was contained in her narrative dated June 3, 2015. She stated the proposed redevelopment of the property will result in an overall more nearly conforming condition, relative to the existing condition of the lot. Ms. Roseberry answered any questions from the board.

Attorney Boldt indicated that he was willing to address each of the five criteria for the granting of a variance as contained in his narrative. Members felt that the criteria were adequately addressed and available in the handout. Attorney Boldt then answered any questions from the board.

Mr. Woodruff addressed the board briefly, referring to his staff memo of June 12<sup>th</sup>, 2015.

Members questioned if the existing dwelling was one story, and questioned if the new dwelling was one or two stories. Attorney Boldt replied the proposed dwelling is 2 stories and will comply with the height requirements of the Moultonborough Zoning Ordinance.

Mr. Stephens opened the hearing for public input. Sal and Ann Perra, 98 Wyman Trail; Dr. Douglas and Alison Scott, 104 Wyman Trail; and Richard Grossman, 112 Wyman Trail all spoke in favor of the granting of the variance.

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 8:31 PM and came out of deliberative session at 8:37 PM.

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

**Motion:** Mr. Bickford moved to grant the request for a variance from Article III.B.4 for Roman P. and Misuk Legocki, Tax Map 188, Lot 24, subject to the following conditions: 1) The required Shore Land Permit and septic system approval be submitted at time of Building permit application to the Code Enforcement Officer; 2) that the requirements in the MZO under Article IV,G. Comprehensive Shore land Protection that are more strict than the state requirements be met, and that the proposed plans be adhered to; 3) The foundation corners pinned by a NH Licensed Surveyor, 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, carried unanimously.

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

3. Bettinger Family Revocable Trust (282-36) (22 Adams Shore Road)  
Variance from Article III.B.3

Mr. Stephens stated that this is a request for a sideline setback variance.

Donald Bettinger presented the application for variance for the removal of an existing detached garage and to construct a replacement garage in the same location.

Planner Woodruff reviewed his staff memo, giving a brief summary of the request and background. He stated that he recommended the granting of the setback variance with the conditions that the required Shoreland Permit amendment be submitted at time of Building Permit application.

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

Nicol Roseberry of Ames Associates noted for the record that she had prepared the original Shoreland application for the property and it was approved in 2012 (approval # 2012-00027). She confirmed with DES that the garage (to be rebuilt in-kind) was on the plans that were approved by the State. Ms. Roseberry has submitted an amended plan to DES, noting the only difference is that there is 85 square feet of additional ground impact. This is not an increase in footprint, only a temporary impact. Members discussed this and would like add a condition of approval to include the installation of a drip edge of crushed stone around the concrete to collect stormwater runoff.

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: 47 PM and came out of deliberative session at 8:50 PM.

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

**Motion:** Mr. Zewski moved to grant the request for a variance from Article III.B.3 for The Bettinger Family Revocable Trust , Tax Map 282, Lot 36, subject to the following condition regarding the installation of the stone drip edge; 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. St. Peter, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford, St. Peter) and none (0) opposed.

Mr. Stephens noted the 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 May 20, 2015 granting of a variance for The Strayer Family Trust, Frances Strayer et al, Trustees

(236-13)(117 Echo Landing Road).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the Hearing on May 20<sup>th</sup>. There were no changes made to the draft.

**Motion:** Mr. Nolin moved to direct the Chairman to sign the Notice of Decision as written, for The Strayer Family Trust, Frances Strayer et al, Trustees (136-13) (117 Echo Landing Road) and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Bickford, motion passed, five (5) in favor (Stephens, Nolin, Zewski, Bickford, St. Peter) and none (0) opposed.

## **VII. Adjournment**

**Motion:** Mr. Stephens made the motion to adjourn at 9:01 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant