

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

Regular Meeting

March 2, 2016

Minutes

Present: Members: Bob Stephens, Ken Bickford, Robert St. Peter
 Alternates: Nick DeMeo, Paul Onthank
Excused: Members: Bob Zewski, Russ Nolin
 Alternates: Richard Jenny, 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 7:01 PM and led the Pledge of Allegiance. He then introduced the members of the board to the public. Mr. Stephens appointed Paul Onthank and Nick DeMeo to sit on the board with full voting privileges in place of members Bob Zewski and Russ Nolin.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. St. Peter moved to approve the Zoning Board of Adjustment Minutes of January 6th & February 11th, 2016, as written, seconded by Mr. Stephens, carried unanimously.

Motion: Mr. DeMeo moved to approve the Zoning Board of Adjustment Minutes of February 11th, 2016 Special Meeting, as written, seconded by Mr. Stephens, carried unanimously.

IV. Hearings

1. Manuel & Wendy Papagolos (189-18) (30 Arrow Trail)
 Variance from Article III.B. 3

Chairman Stephens stated that this is a request for a side setback variance. The applicant is proposing to construct a garage with living space addition to the existing nonconforming residence located 13.8 ft. from the side property line where 20 ft. is required.

Dan Ellis from Ames Associates was present this evening representing the applicants Manuel & Wendy Papagolos, who were also present for the hearing. Mr. Ellis briefly described the location and existing conditions of the property, noting there are six waterfront lots that were created in 1955 and are prime examples of a reasoning for zoning. The lots average 0.25 of an acre with 60 +/- feet of shore frontage and 55 +/- feet of road frontage. The existing house does not sit parallel to the property lines. It is located 13.8' from the north property line at the closet point, and 17.0' from the south property line at the closet point. The proposal is to construct an attached garage with living space that will conform to the side setback to the south and will maintain the existing 13.8' setback to the north. Mr. Ellis noted that the zoning ordinance allows for an addition to nonconforming structures up to 20% of the structures habitable floor space, no closer than ten feet from the property line. There is a proposed septic system to

be located on the lot across the road, owned by the Papagolos. Mr. Ellis briefly addressed the criteria for the granting of a variance and answered any questions from the board.

Planner Woodruff referred to his staff memo of February 25th, noting given that the subject lot is a buildable lot of record, and that it is unique in its width vs. length, constructing a viable, usable dwelling and garage completely within the prescribed building envelope appears to be unreasonable. He suggested that the Board ask the applicant to explain the best practices to be used. The applicant has chosen to seek relief from the Zoning Board prior to submitting an application to the NH DES for a shore land permit, and this is allowed. He believes the applicant has presented an argument for the variance and that the overarching reason is that no reasonable, typical dwelling and garage could be constructed on the lot of record given the very small, narrow building envelope.

Mr. Stephens questioned what the applicant is proposing for best management practices. Mr. Ellis replied they have a very small lot and Shoreland permitting limits you to 30% coverage of impervious surfaces of your land that falls within 250' of the lake. They are currently at 31%. They are exchanging the driveway for a permeable one and by doing that they drop the coverage to 29.3% with the new addition. They are proposing storm water infiltration trenches under the eaves, which will be a part of their shore land application.

Mr. Bickford requested clarification of the septic system proposed across the road. Mr. Ellis stated that the Papagolos own Lot 15 across the road. There is an existing barn on the lot. There will be a tank near the house and will be pumped across the road, around the barn to a new leach field.

Mr. DeMeo questioned if the two lots needed to be combined. This question led to a discussion regarding easements with the Planner and Mr. Ellis offering suggestions to make certain the two lots remained tied together. A suggestion was made language be added to the notice of decision regarding Lot 15 not being able to be sold separately, and that the decision be recorded at the registry of deeds.

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

Scott Crabtree, abutter to the north, commented that Wendy and Manny are good neighbors and he has no objections to their request. Mr. Crabtree went on to state that he applied for a variance to construct a garage on their back lot and that it was denied. He said that he would love to do the exact same thing that is being proposed this evening. If the application is approved, he will hire the same company to make application to the board. Mr. Stephens replied that Mr. Crabtree has the prerogative to come before the board and they look at each individual application on its own merits. They will evaluate his application as it applies to his property and adjudicate it accordingly. There is no such thing as precedent as every property is generally unique to itself.

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 7:30 PM and came out of deliberative session at 7:37 PM.

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

Motion: Mr. Bickford moved to grant the request for a variance from Article III. B (3) for Manuel and Wendy Papagolos, Tax Map 189, Lot 18 subject to the following conditions:
1) That a foundation certification be prepared prior to construction; 2) All best management practices be employed; 3) The paved driveway be replaced with a permeable drive to lessen the increase in impermeable area; 4) The existing shed to be removed; 5) The approved shore land permit be in line with this approval and be submitted with the building permit application; 6) Tax Map 189, Lot 15 (used for the septic leach field) may not be sold separately; 7) This Notice of Decision shall be

recorded at the Carroll County Registry of Deeds ... and to close the Public Hearing. The Board moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting, seconded by Mr. St. Peter, motion passed, five (5) in favor (Stephens, Bickford, St. Peter, DeMeo, Onthank) and none (0) opposed.

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

2. Sixteen Clearwater Point Road Realty Trust, Laurie Anne Tocco-Burns, Trustee (174-64) (16 Clearwater Point Road) - Variance from Article III.B. 3 & 4

Chairman Stephens stated that this is a request for a side and waterfront setback variances. The applicant is proposing the removal and replacement of existing, non-conforming residence and garage. The existing side setback is 8' at the closest point (same proposed). The existing shore setback is 22' at the closest point (25' proposed).

Dan Ellis from Ames Associates was present this evening representing the applicant, who was also present. Mr. Ellis briefly described the location and existing conditions of the property noting the proposal is to remove the existing aging cottage and garage and replace it with a new residence with a detached garage, which is attached with a covered deck to the residence. The lot is the smallest lot on the cul-de-sac. Other lots on the cul-de-sac are typical in that they have very little road frontage and taper out a regular amount of shore frontage. The shape of the lot pushes the houses towards the lake. Mr. Ellis referred to the tax map which showed the 50-foot shoreline buffer, noting that most every house on the cul-de-sac does not meet the 50-foot shore setback requirement.

Mr. Ellis went on to state that immediately abutting the subject lot to the west is a property that is made up of three original lots, therefore it doesn't suffer from the same issues as the subject lot in terms of lot width and side setback requirements, but does have an existing structure that doesn't conform to the shore setback. To the south east of the subject lot, Lot 65, it is very similar to the project lot. It is slightly larger and has a much larger house footprint, and was updated within the last ten years. It has similar side setback issues, about 12' from the westerly boundary and 10' from the easterly boundary. That project required zoning board relief as well.

The entire neighborhood, the lots were created in 1963, prior to any zoning ordinance in the Town of Moultonborough. When you apply current setback requirements to the lots, the resulting envelope is quite small. It would be very difficult to fit a reasonable size home in that building envelope.

The cottage is one of the oldest and smallest houses on the cul-de-sac. It has had issues in the past with snow loads. If the structure were to remain it would need to entirely rebuilt from the ground. The foundation would need to be replaced. There are issues with grading. There is a lot of standing water that ends up underneath the home at certain times of the year. It is not feasible to keep this and try to add on to it. Therefore, they have proposed a new residence. They have maintained the side setbacks and have increased the setback to the shore, more efficiently using the space on the lot. They have proposed a detached garage, connected to the house with a covered deck. A new leach field will be installed under the existing driveway. The proposal will increase the shore setback from the existing 22' to the deck, to 25' to the stairs off of the deck, about 30' to the proposed deck itself. Mr. Ellis commented that the existing sideline setbacks have proven adequate over the years to avoid infringements on neighbor's properties. As noted, the lot to the south east has a similar side setback of 10' at the closest point. The proposal is to maintain 8' at the closet point on the south east side and 10.6' at the closest point on the west side.

Mr. Ellis stated that replacing the existing aging cottage and garage with a brand new, modern, attractive residence and garage will certainly improve the value of the property and therefore would not have a negative effect on surrounding property values.

Mr. Ellis further stated that in terms of the Shoreland permitting requirements and looking at the project from an environmental point of view, they are improving the shoreline setback slightly. The existing lot coverage is 30.5%. They are proposing to replace the entire driveway with permeable materials which will drop the coverage on the lot to 27%. They are not required to install stormwater infiltration trenches under the eaves as they are reducing the coverage. They will recommend it to their clients as an inexpensive way to improve stormwater runoff.

Mr. Ellis briefly answered any questions from the board.

Planner Woodruff referred to his staff memo of February 25th noting the variances required to construct the dwelling, decks, porch & garage. There are five different locations that need relief from the 20 and 50 setback. The Planner gave a little bit of history, noting that in 1963 there was no zoning or planning board, so if a developer hired a surveyor to prepare a plat all they did was record it at the registry. This is how they have ended up with lots such as these that were maximized for money purposes. There also were no subdivision regulations which addresses road standards and the size of the cul-de-sac which lead to the size of the cul-de-sac and the triangular shape of the lot. Mr. Woodruff commented that the applicant could go to the Code Enforcement Officer for a building permit to build a triangular house and would not need to be before the board. The board needs to decide whether that's reasonable or not. Is the house reasonable or useful shaped like a triangle? The Planner believes that the applicant has presented an argument that justifies the public interest, spirit of the ordinance (reasonable light and air, buffers), substantial justice, no diminution of value of surrounding properties and unnecessary hardship criteria in the written application, but that the overarching reason is that no reasonable, typical dwelling and garage could be constructed on the lot of record given the very small, narrow triangular shaped building envelope. Mr. Woodruff recommended granting the setback variances with the conditions that a foundation certification be prepared prior to construction, that all best management practices be employed, such as drip edge filter strips, that the paved driveway be replaced with a permeable drive to lessen the increase in impermeable area, and the approved shore land permit be in line with this approval and be submitted with the building permit application.

Mr. Bickford asked if there will be a full foundation under the porch or piers. Mr. Ellis stated likely a full foundation, not certain if it will be a crawl space only. He does not believe any of it will have a full basement.

Mr. DeMeo questioned if the 8' setback is from the corner of the porch or to the overhang. Mr. Ellis stated the corner of the porch. Overhangs up to 18" are excluded. Mr. DeMeo noted his concerns with the 8' setback. He would rather see the other side reduced to 12' and the 8' increased to 10'. Mr. Ellis replied that they're looking to maintain existing setbacks such that neither one of the neighbors feel that they are coming any closer to them.

The board discussed the location and orientation of the existing cottage. There is a lack of privacy on two fronts. Mr. Stephens felt that the proposed design with the porch on the south east side will create greater privacy for Lot 65.

Mr. Bickford was in agreement with Mr. DeMeo regarding the porch and deck. While he understands the hardship relating the lot, he thought it could be a lot more conforming without putting it there. He does not feel that it is necessary. The Chair reiterated that Mr. Ellis had indicated they were trying to maintain the original setbacks, which have worked forever. The Chair replied that basically the setbacks were designed to preclude an overcrowding scenario, and if what they've had has worked for the last 50 years, where does this proposal change it and what is the benefit to removing the porch? How does that benefit the neighbor or the area compared to the implied loss to the applicant? Mr. Ellis commented the hardship is the lot itself. If you're looking at porch and deck verses house, you're really talking about use, and the question is, is the use they're proposing reasonable. He believes that a screen porch and a deck on a lakefront lot is reasonable.

Mr. St. Peter commented that he understood what Mr. DeMeo was saying, but asked if two feet really makes enough of a difference that someone suddenly says I feel like you're, if it was ten feet more to him it may feel like if it's different. He doesn't know that twenty-four inches is going to change the feel.

Mr. Ellis stated he had a bit of issue, because they are focused on the porch and deck, it becomes a significant one. He had some miscommunication with his client in that that porch which is shown is actually part of the living space, and there will be no porch. It is part of the interior. Mr. Stephens questioned how the total square footage of the existing verses the proposed. What's the difference between the two? Mr. Ellis replied that he did not know. Ms. Tocco-Burns replied the existing is about 1,300 SF and is only one level. The proposed is narrower, but has two bedrooms upstairs. What's proposed is a smaller footprint.

After further discussion, Mr. DeMeo noted that he did not have a problem with the 8 feet.

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

Michael Weene addressed the board. He stated that he and his wife are owners of the subject lot to the south east. He commented that he was going to surprise his abutters by telling her that he approves of the project, letting her know that it is wonderful that they want to live there full time and that they will do everything they can to be the best neighbors possible. Mr. Weene stated he was familiar with reading plans and they are the ones that are affected, not the board. He asked who did this work for? He stated that he has lived there for 21 years and it doesn't work. He stated that he was all for the project, until five minutes ago. The plan he looked at said porch, 8' from his house, and now has turned into living space, which is not porch. As far as he was concerned, if it were him, this hearing is over tonight. Mr. Weene provided the board with a sketch of his property in which he states that he is 12'3" from the property line. They added onto their house, noting they had to maintain the 12'3" setback and they went to 14'2". Mr. Weene went onto state that the three lots to the north are reverse grandfathered and will not be built upon with three homes. One subject home could be replaced in the future and will not need special permits, unless they want to stay that close to the lake, and that is the lot line that we should be infringing upon, the 8, 9, 10, 11 feet. Not mine. This is wooded property over here and it doesn't affect anybody. She's not here tonight. She knows what's going on. Mrs. Sherry Weene interjected that "she" told me to kind of represent her in that she doesn't have a problem with that. Mr. Weene went on to say I'm not throwing her under the bus, I'm just telling you from my stand point these houses are too close together and now's the time to fix it. If they want to build a new house, I love the idea, I'm all for it. I love the house design, I like the footprint, I like that garage, I like the driveway, I like everything. This doesn't belong there.

Mr. Bickford questioned if the zoning board had granted a variance for that structure to be placed 12 feet from the sideline. Mr. Stephens stated yes. Mr. Weene replied that he was also denied by the planning board to put his screen porch at 10 feet. It would be at 35' from the lake instead of 37 to the front corner of my deck. They made me squash my screen porch down to an almost unlivable size, but I built it anyways. Not everybody gets to come out of here happy.

Mrs. Weene added that right now, if you're in their living room, they have a window that you only see trees out of it. She didn't know about height or whatever the proposed house, or whether we even have a house plan yet. They might not have one yet. Is it going, am I going to have a house window to part of a house like right there at my window? Mr. Stephens replied you may or may not. The applicant is not here for a height variance and the town does have a thirty-two-foot height restriction as an average to the property slope. They are not here requesting that, so it is within their entitled right to build that house up to 32 foot of height. Mr. Weene questioned how that height was taken. Mr. Stephens explained that it is taken from the average around the foundation of the house. The Planner clarified that it was an average of the highest and lowest point. Mr. Weene questioned if that was before or after it was built and before or after the fill has been brought in to change grade. Mr. Stephens stated that re-grading is allowed on a piece of property. The Code Enforcement Officer requires that any measurement be taken from a grade that is at least representative of six feet away. You can't put a rock wall a foot away from your

foundation, as an example that's eight-foot-high and then measure from the top of that rock wall. That is not acceptable. Mr. Weene commented that he was aware that this was not a hearing for the height of the house, but he wanted to bring up something. To conform and not conform are two different things and the neighborhood is one and a half story. It's one story. There a lot of ranches, but they're being changed over and a lot of people are building up into the eaves. They're not putting up apartment buildings. He knows that 32' allows quite a tall house and being so close to their property it might effect it. Mr. Stephens replied that it was up to their design. They are not here for a height variance. Mr. Weene commented they should try and be nice with the neighborhood.

Mr. Weene questioned what was going to be done about the large change that was made tonight. Mr. Stephens stated that they are here for a footprint. They have basically hit us with a footprint request. The fact that it's a porch verses living space doesn't change the footprint and the setback that they have asked for.

Mr. Stephens noted the board was in receipt of an email from abutter Andy Teich, at 11 Clearwater Point Road expressing his support for the request being made by the applicants.

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 8:12 PM and came out of deliberative session at 8:25 PM.

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

Motion: Mr. St. Peter moved to grant the request for a variance from Article III. B (3) & (4) for Sixteen Clearwater Point Road Realty Trust, Tax Map 174, Lot 64 subject to the following conditions: 1) That a foundation certification be prepared prior to construction; 2) All best management practices be employed to include drip edge filter strips; 3) That the paved driveway be replaced with a permeable driveway to lessen the increase in impermeable area; 4) The approved shore land permit be in line with this approval and be submitted with the building permit application; 5) This Notice of Decision shall be recorded at the Carroll County Registry of Deeds... and to close the Public Hearing. The Board moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting, seconded by Mr. DeMeo, motion passed, five (5) in favor (Stephens, Bickford, St. Peter, DeMeo, Onthank) 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

VI. Unfinished Business

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 8:29 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant