

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

Regular Meeting

April 20, 2016

Minutes

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

I. Call to Order

As Senior Member, Mr. Hopkins called the meeting to order at 7:01 PM and stated that they would begin with their annual business meeting and the review of the ZBA Policies and By-Laws following the reciting of the Pledge of Allegiance.

II. Pledge of Allegiance

III. Organizational Meeting - 2016 Board Organization

Review of Policies and By-Laws

Board members were provided with a copy of the Policies that were approved in 2015. Mr. Nolin stated due to the number of items on this evenings agenda, asked that the Board table their review until a later date.

Motion: Mr. Nolin moved to table the review of the Moultonborough Zoning Board of Adjustment Policies to May 4th, 2016, seconded by Mr. Stephens, carried unanimously 4 to 0 with only the elected members voting.

Election of Officers

Mr. Hopkins called for nominations for Chairman.

Motion: Mr. Bickford moved to nominate Bob Stephens as Chairman, seconded by Mr. St. Peter.

Mr. Hopkins asked if there were any other nominations for Chairman, noting there were none. Mr. Stephens stated that he was willing to serve as Chairman again

Motion passed 4 to 0 with only the elected members voting.

Mr. Hopkins called for nominations for Vice Chairman. Mr. Nolin indicated that he would respectfully decline a nomination to serve another term as Vice Chairman.

Motion: Mr. Stephens moved to nominate Ken Bickford as Vice Chair, seconded by Mr. St. Peter.

Mr. Hopkins asked if there were any other nominations for Vice Chairman, noting there were none. Mr. Bickford stated that he was willing to serve as Vice Chairman.

Motion passed 4 to 0 with only elected members voting.

As Chairman Mr. Stephens continued with the agenda, and the seating of alternates. He appointed Jerry Hopkins to sit on the board with full voting privileges for public hearings 1 and 2, and Richard Jenny to sit on the board with full voting privileges for public hearings 3 and 4.

IV. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of March 16th, 2016, as written, seconded by Mr. Nolin, carried unanimously, with Mr. Stephens abstaining.

V. Hearings

1. William R. Halliday and Karen Palma-Halliday (147-29) (180 Wentworth Shores Road)
Variance from Article III.B.4

Chairman Stephens stated that this is a request for a shore land setback variance for the placement of a 16' x 20' shed located 40 feet from the shoreline.

William Halliday presented his application for the variance on Tax Map 147, Lot 29, to allow for the placement of a storage shed, located within the required 50' shore land setback. Mr. Halliday briefly described the lot. He noted the uniqueness of the lot due to the length and width. The property is 500 feet long and Wentworth Shores Road has a right-of-way through the entire length of the lot. The Lot is subject to both the shore setback and the right-of-way setback. There are only two tiny building envelopes as the setback lines overlap a large portion of the lot. Members reviewed a sketch of the property showing the proposed location of the shed. Mr. Halliday answered any questions from the board.

Mr. Stephens referred to the Planners staff memo noting his recommendation, background on the property and suggested conditions of approval shall the board grant the request as submitted. Mr. Stephens stated that the NH DES has issued a Shoreline Permit by Notification 2015-02872 dated 10/21/15 to impact 320 sq. ft. to place a storage shed.

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

Mr. Stephens asked if there were any 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 the granting of a variance at 7:15 PM and came out of deliberative session at 7:22 PM.

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

Motion: Mr. St. Peter moved to grant the request for a variance from Article III.B (4) for William R. Halliday and Karen Palma-Halliday, Tax Map 147, Lot 29, subject to the following conditions: 1) That all best management practices be employed, such as drip edge filter strips or rain gutters that drain into a rain barrel; 2) No removal of trees for the placement of the shed, 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. Hopkins, motion passed, five (5) in favor (Stephens, Nolin, Bickford, St. Peter, Hopkins) and none (0) opposed.

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

2. Bryan and Linda Corr (270-4)(46 Deerhaven Road)
Variance from Article III.B. 3 & 4

Chairman Stephens stated that this is a request for a variance from Article III.B. 3 & 4. The request is to move back (and rebuild) an existing non-conforming structure 10 feet further from the lake.

Bryan and Linda Corr were present for the hearing. Mr. Corr presented his application for the variance on Tax Map 270, Lot 4. Mr. Corr stated that he presently has a building permit from the Town, and a shore land permit from the State of New Hampshire, to rebuild the structure in its existing location. His request is to move the structure back ten (10) feet, a total of twelve (12) feet from the shore. He believes it will be beneficial for both him and his abutters. If it was moved back it will allow his abutter to see the channel, increasing the view. The abutter could not see the channel for the past 50 years because the boat house was right up against the shore. Mr. Corr stated it was a dry boat house, a non-conforming structure. Mr. Corr stated in moving it back it would improve his view and everyone would win as he would be moving it further away from the lake, and become less non-conforming. Mr. Corr went on to review the criteria for the granting of a variance.

Mr. Stephens referred the Planners staff memo noting his recommendation, background on the property and suggested conditions of approval shall the board grant the request as submitted.

Members questioned what would be between the front of the proposed structure and the water. Mr. Corr stated there would be nothing, unless he needed to build a retaining wall. There will be a foundation for the proposed structure, and it will be back filled. Members questioned if there were plans for it to be sand, dirt or concrete. Mr. Corr stated the foundation will be concrete and the area would be the natural habitat of the shoreline. He does not intend on changing that or putting any sand there. Members questioned if there was a need for excavation. Mr. Corr that there will need to be some excavation for footings and to move it back 10 ft. Members questioned the number of stories and height of the proposed structure. Mr. Corr stated that it is one story. There will be a foundation and one story that may be approximately 21'-23' high. It will not exceed what is allowed by the ordinance. The structure will be the same dimensions as the existing non-conforming structure.

Mr. Stephens opened the hearing for public input at this time. Sandra Hughes Cripps and Steven Lavoie, representatives for abutter Richard Hughes, 52 Deerhaven Road noted their concerns which included allegations of misrepresented information on the plan submitted with the application, use of the structure and erosion of the embankment.

Abutter Ed Mezzanotte, 44 Deerhaven Road, and Dan Kirker, 56 Deerhaven Road, each noted that they had no objections with the proposed plan as presented and spoke in favor of the proposed improvements.

Mr. Nolin noted that he had concerns with the notation on the plan stating the prior structure collapsed in 2015.

Mr. Stephens asked if there were any 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 the granting of a variance at 7:50 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, Russ, Ken, Rob, and Jerry.

Motion: Mr. Bickford moved to grant the request for a variance from Article III.B (3) & (4) for Bryan and Linda Corr, Tax Map 270, Lot 4, subject to the following conditions: 1) That all best management practices be employed, such as drip edge filter strips or rain gutters that drain into a rain barrel; 2) The approved shore land permit by notification be resubmitted to NH DES as an amended application and be in line with this approval; 3) That a foundation certification be prepared prior to construction, and submitted to the Town, 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. Hopkins, motion passed, five (5) in favor (Stephens, Nolin, Bickford, St. Peter, Hopkins) and none (0) opposed.

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

Mr. Stephens stated that Mr. Hopkins would be stepping down for the remainder of the meeting, noting that he had previously appointed Mr. Jenny for hearings 3 and 4.

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

Chairman Stephens stated that this is a request for side and waterfront setback variances. He added that the Board had heard an application for this property on March 2nd, 2016 to allow the removal of and reconstruction of an existing single family dwelling. The Board granted an approval, which remains in effect unless it is superceded by an approval for the revised application. If the revised application is denied by the board, the original approval of March 2nd, 2016 remains in effect.

Dan Ellis from Ames Associates was present this evening representing the applicant. Mr. Ellis stated as the had Chair explained they were before the board on March 2nd. At that time the proposal was to remove the existing residence and replace it with a new residence further from the lake, but maintaining the same sideline setbacks as the existing residence. The board did approve the request unanimously. At the public hearing on March 2nd, the abutter to the south east, Mr. Weene, expressed some dissatisfaction with the fact that they were maintaining the existing side setback distance of 8 ft. He expressed that he would rather have seen that the proposed house be centered on the lot, which would move it away from his lot and closer to the north westerly abutter. The applicant has decided to amend the plan accordingly and is seeking approval from the board, with the understanding that should the board for any reason deny the amended application, that the original approval of March 2nd would remain in effect.

Mr. Ellis noted the revision to the plan, stating that the proposed sideline setbacks are 11.4 feet on both sides, the setback to the lake remains the same as the March 2nd application, which is 25 feet from the shoreline. The side setbacks to the proposed garage remain the same as the March 2nd, which is 14.7 feet to the abutter, Mr. Weene and 10.6 to the north west abutter. Mr. Ellis stated that both abutters have reviewed the amended plan and have submitted a letter of support for the project as amended. Mr. Ellis stated that the justification for the variance remains the same as what was presented on March 2nd, with the exception of the details in the side setbacks in accordance with the amendment to the plan. Mr. Ellis briefly answered any questions from the board.

The Chair briefly recapped what took place at the meeting on March 2nd in which Mr. Weene expressed his concerns with the placement of the new dwelling, asking if it could be moved over. The

Chair stated that he did not allow an amendment to the application at that time as the abutter to the north west was not present at the public hearing. The abutter notification that had been sent stated what the proposed setbacks were, and the abutter may have had an issue with the amendment.

The Chair stated that all of the issues that pertained at the first hearing are relevant to this application in terms of the five criteria. Based on that the Chair suggested the board could into deliberations if there were no further questions.

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

The board went into deliberative session to discuss each of the criteria for the granting of a variance at 8:19 PM and came out of deliberative session at 8:20 PM.

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

Motion: Mr. Bickford 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 further 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, Nolin, Bickford, St. Peter, Jenny) and none (0) opposed.

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

4. Leon & Cheryl Haydon (252-23) (Winaukee Road)
Variance from Article III.B. 1 & 3

Chairman Stephens stated that this is a request for a variance from Article III.B. 1 & 3. The request is for the construction of a two-car garage attached to an existing barn, located twenty-seven (27) feet from the center of Winaukee Road, two (2) feet from the side setback and one (1) foot from the rear property line of Crosswinds, which is a septic field.

Lee Haydon presented his application for the variance on Tax Map 252, Lot 23. Mr. Haydon gave a brief history of the property, noting there is an existing barn which was built in approximately 1830. It was a horse barn originally built on his lot across the street, which is a part of Crosswinds. The barn was moved to its present location on Tax Map 252, Lot 23. Lot 23 may not be conveyed separately from Mr. Haydon's abutting property, Tax Map 252, Lot 5. Mr. Haydon noted the only direct abutter is the Crosswinds Association Common Land to the side and rear and it is for septic, storage, boat trailer storage and open space. The septic fields are directly behind his property line.

The proposal is to construct an attached two-car, one story garage to be located twenty-seven (27) feet from the center of Winaukee Road, two (2) feet from the side setback and one (1) foot from the rear property line of Crosswinds. The barn is located twelve feet off the edge of pavement (Winaukee Road). The garage would be constructed back eleven feet from the front of the barn, approximately twenty-seven (27) feet from the center of Winaukee Road. In his presentation, Mr. Haydon referred to his narrative which stated his reasoning for the criteria for the granting of a variance. He noted that abutter Jim Mullen

had no problem with the project and that the board members from Crosswinds have given a verbal approval for the project, noting if approved by the ZBA, it would require approval from the association members.

In reviewing the materials presented with the application, members questioned if a survey had been done on the site. They then questioned if a 24' x 24' garage would actually be able to fit within the requested setbacks. The Chair suggested the board could approve a two-car, single story garage, attached to the barn, to be located no closer than 1 foot to the rear property line, no closer than 2 or 3 feet to the right hand side, they have not stipulated the size of the garage. What they have stipulated is the minimum acceptable setbacks. If that is a 20 x 20 garage, that's what they'll end up with. Mr. Haydon felt this was fair, commenting that he would have been more precise, but he couldn't locate four pins. He only has two pins on the right side. He did the best he could, but could not be precise.

Members discussed at length the proposal, noting their concerns with "estimated" setbacks and the guess work they're doing. Mr. Haydon stated if the variance were to be approved, he would have the lot surveyed. Members questioned if they could table the hearing to allow for a survey to be completed and provide the board with accurate figures.

Next the question raised if this were to be approved, would they be creating a safety issue? It was noted that a blind area would be created by the existing barn. The question was asked if there was a location on Mr. Haydon's abutting property to construct a garage. It was noted the board was acting on an application for relief on Lot 23. After a lengthy discussion regarding safety the Chair asked the members how they would feel if he were to seek input from the Police Chief from a traffic standpoint? Asking for input from him. Would that have any impact on their consideration?

Some of the members commented that they did not feel that they could make a decision without the actual location of the garage. A majority of the members noted their concerns with safety.

There were no members from the public present for the hearing.

Mr. Stephens stated he would like to make a motion that would allow him the opportunity to talk with the Police Chief and the acting Road Agent to provide the board with their input. This would also give the members of the board an opportunity to review the applicant's indication that there is or is not a viable alternative on Mr. Haydon's abutting Lot (#5). This would go back to the issue of hardship.

It was the decision of the Board to continue the public hearing to a date certain to give the opportunity for the Chairman / Vice Chairman time to get the acting Road Agent and Police Chief to render an opinion on the applicant's request for the location.

Members questioned if the board was able to require a survey of the property. A comment was made relative to the size of the lot being 0.05 acre, not knowing where the property pins are located, how could you know if the garage was even constructed on the lot? The Chair replied, if the board were to consider an approval, that an approval stating the setbacks, which ultimately dictates the size of the garage, he may end up with a one-car garage. It was still noted that they don't know where the lot lines are. The Chair stated that this is all predicated on an after-the-fact survey. Why should the applicant incur the expense of a survey if they can't get past other hurdles? The safety issue. Mr. Haydon commented that he feels he would have the same safety issues if he were to construct a garage on Lot 5.

Mr. Stephens asked if there were any additional questions from the board at this time, it was noted there were none.

Motion: Mr. Stephens moved table the Public Hearing for Leon & Cheryl Haydon, Winaukee Road, (252-23) to May 4, 2016, seconded by Mr. St. Peter, carried unanimously.

VI. Correspondence

VII. Unfinished Business

1. Review and possible authorization for the Chairman to sign the formal Notice of Decision for the March 16th, 2016 granting of a Temporary Use Special Exception for Corner Concessions, for a parcel located at 1009 Whittier Highway (Tax Map 52, Lot 33).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the Hearing on March 16th. There were no changes made to the draft.

Motion: Mr. Bickford moved to approve the formal Notice of Decision as written for Corner Concessions (52-33) and to authorize the Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Nolin, motion passed, five (5) in favor (Stephens, Nolin, St. Peter, Bickford, Jenny), and none (0) opposed.

2. Review and possible authorization for the Vice Chair to sign the formal Notice of Decision for the March 16th, 2016 granting of a variance for Stephens Landscaping Professionals, LLC, for a parcel located at 63 Whittier Highway (Tax Map 141, Lot 9).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the Hearing on March 16th. There were no changes made to the draft.

Motion: Mr. St. Peter moved to approve the formal Notice of Decision as written for Stephens Landscaping Professionals, LLC (141-9) and to authorize the then elected Vice Chairman to sign and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Jenny, motion passed, three (3) in favor (St. Peter, Nolin, Jenny), two (2) abstentions (Stephens, Bickford) and none (0) opposed.

3. Mr. Stephens gave a brief update on the search for a Town Planner, noting at this time this is still an on-going search.

4. Mr. Stephens noted that the annual NH OEP Spring Planning & Zoning Conference will be held this year on Saturday, June 4th at the Courtyard by Marriott, Grappone Conference Center in Concord. He encouraged all to attend this training. [Click here](#) for more details or go to www.nh.gov/oep. (<http://www.nh.gov/oep/planning/resources/conferences/spring-2016/index.htm>)

VIII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:12 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant