

**Moultonborough Planning Board**  
**P.O. Box 139**  
**Moultonborough, NH 03254**

**Public Hearing**

**January 13, 2011**

**Minutes**

Present: Members: Natt King, Chris Maroun, Judy Ryerson, Peter Jensen,  
Ed Charest (Selectmen's Representative);  
Alternate: Keith Nelson; Town Planner: Dan Merhalski  
Excused: Members: Joanne Coppinger, Jane Fairchild

Mr. King called the Public Hearing to order at 7:00 P.M. and appointed Keith Nelson to sit on the board with full voting privileges in place of Joanne Coppinger. There were fourteen members of the public in attendance for the Public Hearing.

Mr. King stated that this was a Public Hearing for the Proposed Amendments to the Zoning Ordinance to be included on the ballot for March 2011, noting there will be a brief Power Point presentation on all seven amendments and then they will go back to address each of them in order.

The Town Planner Dan Merhalski opened with the a statement regarding the postponement of the Public Hearing due to the snow storm and what the procedure was. He had spoken with Town Counsel regarding the cancellation of a public hearing for Zoning Ordinance amendments and his reply was that the Board must post a notice with the location, date time and date certain. Town Hall closed at 1 PM due to inclement weather. The notice was posted on the door and bulletin board at Town Hall, the Town's Website and an e-mail blaster was sent to those who subscribe. As a result of the postponement, the second scheduled Public Hearing, if needed, will need to be re-scheduled to meet statute. The Board set Tuesday, February 1<sup>st</sup> as the date for the second Public Hearing.

Mr. Merhalski gave a brief Power Point presentation of the seven proposed ordinance amendments, with questions to be taken at the end. Mr. Merhalski closed his presentation with explaining the procedure for the proposed amendments. The Board will open each Public Hearing separately where they can discuss and ask questions on each of the seven proposals and open them up for public input. Any changes made to the drafts will be made this evening. A second, final Public Hearing may be held if there are substantial changes made. If the board is in agreement with the proposed language as drafted, they do not have to schedule a second Public Hearing, they can vote to send them to the Town Clerk as written. In the event of a second Public Hearing, only editorial changes may be made, no substantive changes may be made. At that hearing the Board will vote to either forward the proposal on to be included on the ballot for 2011 or withdraw the proposal.

Hollis Austin and Alan Ballard both questioned the board proceeding forward with the Public Hearing this evening. Mr. King stated it was the appropriate way to proceed and were comfortable in doing so.

**1. Inclusion of New Table of Permitted Uses** - This article will create a new Table of Permitted Uses in Article VI "Commercial Uses", which reflects the currently accepted uses and those that require Special Exception or are Not Permitted in all zoning districts, and replaces the wording in each zone currently in the ordinance. This should allow residents to more easily determine what uses are permitted, not permitted, or require Special Exception, in their zoning district. No changes to any uses are proposed.

Mr. King opened the first Public Hearing listed on the agenda, and asked for any comments on the proposal, the inclusion of a new table of permitted uses.

Nancy Wright commented that she still had concerns with the board proceeding forward with the hearings this evening. Mr. King stated again that the board was comfortable with holding the public hearing this evening.

Board members were in agreement with the proposed language as written.

**Motion:** Mr. Maroun moved that the Board accept the language as presented for the Inclusion of New Table of Permitted Uses and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Charest.

Ms. Ryerson commented that there is enough time to notice the February 1<sup>st</sup> Public Hearing, and if there was any question that the hearing this evening did not give the public the opportunity to express their concerns they can attend on the 1<sup>st</sup>. The board could continue all seven of the proposed amendments to February 1<sup>st</sup>, and allow the public to weigh in on that date.

**Motion:** Mr. Maroun moved to continue Item #1, Inclusion of New Table of Permitted Uses, as written, to February 1, 2011, seconded by Mr. Charest, motion carried 6 to 0 in favor.

**2. Lot Coverage Correction** – This proposal amends the lot coverage wording in Article VI (F)(3) to reflect changes approved at Town Meeting in 2010 to remove the words “50 percent” from the following sentence: “Any easement for public use, such as a pathway or walkway through the lot shall not be counted in the 50 percent lot coverage calculation.” This is to incorporate the 65 percent lot coverage allowance in the Commercial C Zone, approved at last year’s Town Meeting.

Mr. King opened the second Public Hearing listed on the agenda, and asked for any comments on the proposal, the amendment to correct the Lot Coverage.

Tom Howard suggested for clarification purposes the board may want to consider moving the sentence “Any easement for public use, such as a pathway or walkway through the lot shall not be counted in the lot coverage calculation” to be the end. Board members reviewed this and were in agreement with Mr. Howards’ suggestion.

**Motion:** Ms. Ryerson moved to amended the language as proposed to Item #2 and to continue to February 1, 2011, seconded by Mr. Jensen, motion carried 6 to 0 in favor.

**3. Site Plan Review Thresholds** –The requirements for Site Plan Review in Article VI (A)(5) will be amended to exclude all commercial uses on lots under 1 acre that develop under 200 sq. ft. of area, or for lots over 1 acre, development under 500 sq. ft. All commercial development over these thresholds will continue to require Site Plan Review.

Mr. King opened the third Public Hearing listed on the agenda, and asked for any comments on the proposal, site plan review thresholds.

Tom Howard agreed with the proposal, but questioned how the changes would be tracked. It was noted that the changes must still meet all other requirements, which includes a building permit. They will need to submit a detailed letter to the Code Enforcement Officer (CEO) who will review the letter and determine if it requires site plan review. The letter will be attached to the building permit.

Jim Mardis commented that the Town records are not always accurate and questioned where the burden of proof would fall? Mr. Merhalski stated this was a cumulative figure and that the Town does not assume liability and is only responsible for what they have on record.

Norman Larson noted that tracking may be difficult as owners change and suggested the addition of a sunset clause of cumulative expansions for current owners. It was noted that the expansion runs with the property and not the owner.

Joel Mudgett questioned if property owners would be required to file "as-built" site plans after the expansion is completed. Mr. Merhalski stated as the language is written you would not be required to file an as-built, which is why they must submit a detailed letter to the CEO.

Alan Ballard questioned if the letter will be required to be filed at the Carroll County Registry of Deeds. It was stated no.

Tom Howard suggested putting a time frame on the proposal, perhaps five (5) years. This way the CEO will only have to go back five years instead of all the history.

Mr. King asked the board for their input regarding a sunset clause. Board members were okay with the language as written.

**Motion:** Mr. Maroun moved to continue Item #3, Site Plan Review Threshold, as written, to February 1, 2011, seconded by Mr. Jensen, motion carried 6 to 0 in favor.

**4. Revocation of Expansions into Setbacks** - This article shall revoke the existing Article VII (B)(3) of the zoning ordinance allowing for expansions of primary dwelling units into the setbacks by up to 100% of the current expansion. If approved, all such expansions shall be permitted only by Variance, rather than Special Exception.

Mr. King opened the fourth Public Hearing listed on the agenda, and asked for any comments on the proposal, Revocation of Expansions into Setbacks.

Mr. Merhalski referred to the graph used in his Power Point presentation that showed what is currently allowed by this section of the ordinance. He commented that in the past small camps and structures have been torn down and rebuilt within the footprint with the expansion. The ZBA had received a legal opinion stating that the ordinance cannot be interpreted that way. It is meant as an expansion of an existing structure, not a tear down and rebuild, which would require a variance. Essentially the proposal is saying that no longer will up to 100 percent expansion be allowed through special exception, you will need to get a variance if you want to expand into a setback.

Norman Larson, architect, expressed his concerns with this the proposal and questioned why the change was being proposed. There are many instances in which this section of the ordinance is necessary when a home owner is making renovations or additions to their home. Mr. Larson felt that this was a large change and unfriendly to lake front owners. He stated that there are many regulations a lake front owner must go through, with many of them overlapping, such as the requirements of the DES Comprehensive Shoreland Protection Act. The CSPA has very strict standards for what type of expansion can happen within the existing setback. Mr. Larson suggested adding a threshold amount that may be expanded. If the board chooses to go forward with the proposal, he suggested that they amend it to include an effective date for those who may already be in the process of planning an expansion of their home. This would give individuals some warning that there is a significant change proposed.

Mr. Mardis agreed with the phasing in period for this proposal.

The Board discussed how this proposal came about, noting that it was a request from the Zoning Board of Adjustment. Mr. Jensen, Mr. Maroun and Mr. Charest were all in agreement with amending the proposal to include and effective date.

**Motion:** Mr. Maroun moved to continue Item #4, Revocation of Expansions into Setbacks, as written, adding an implementation date of September 1, 2011 to February 1, 2011, seconded by Mr. Jensen, motion carried 6 to 0 in favor.

**5. Steep Slopes Protection Ordinance** - This new Article shall apply to all development requiring a Building Permit, Subdivision Approval and/or a Site Plan Review Permit, with a slope of 15 percent or greater, and where the proposed site disturbance is greater than 20,000 square feet in the aggregate.

Mr. King opened the fifth Public Hearing listed on the agenda, and asked for any comments on the proposal, Steep Slopes Protection Ordinance.

Mel Borrin spoke in support of this proposal, commenting the proposal was presented very well, is necessary and urged the board to move forward with the proposal as written.

Tom Howard also supports the proposal, but questioned how Section VII (H) would be applied. Such as undisturbed woods, how this would be calculated. Mr. Merhalski stated that calculation is not difficult. This is done as a model on the computer, it is not a survey taken on the site. A similar discussion with questions took place when the Storm Water Management Ordinance was proposed.

Mr. Jensen noted the effective date is June 30, 2011, and suggested that it should be amended to September 1, 2011. Also noted was Section II. Effective Date, which should be removed.

**Motion:** Mr. Jensen moved to continue Item #5, Steep Slopes Protection Ordinance, to February 1, 2011, as amended by changing the effective date to September 1, 2011, seconded by Mr. Maroun, motion carried 6 to 0 in favor.

**6. Revision of Special Exceptions for Commercial Uses in Residential Agricultural (RA) Zoning District** – This proposal will revise the criteria for granting Special Exceptions for Commercial Uses outside of the three (3) Commercial Zoning Districts. Commercial Uses wishing to be located outside of these districts will be required to meet these new standards.

Mr. King opened the sixth Public Hearing listed on the agenda, and asked for any comments on the proposal, Revision of Special Exceptions for Commercial Uses in Residential Agricultural (RA) Zoning District.

Tom Howard referred to Section E (3) on page 19 of the handout, “That property values in the surrounding area will not be negatively impacted or reduced by such a use.” Mr. Howard questioned if this was a subjective or objective determination by the Board? He stated an example. The board noted the only amendment to this section was changing the word district to surrounding area. Mr. Nelson noted it still is a subjective decision by the Zoning Board of Adjustment after they hear the evidence on what the effect would be on the property values. It is up to the ZBA to determine whether this is met.

**Motion:** Mr. Nelson moved to continue Item #6, Revision of Special Exceptions for Commercial Uses in Residential Agricultural (RA) Zoning District, to February 1, 2011, seconded by Mr. Charest, motion carried 6 to 0 in favor.

Mr. Mudgett commented that the board has continued all of the proposals to February 1<sup>st</sup>, which is the drop dead date that the board may forward them to the Town Clerk for posting on the warrant. Mr. Mudgett presented a scenario in which the board must cancel the hearing on February 1<sup>st</sup>, and asked what they are going to do? They should have a different date, with a back-up date of February 1<sup>st</sup>. The board

discussed this and the dates that they have available. They must meet statutory requirements for notification in the paper and the public hearings must be 14 apart. After further discussion the board was in agreement to schedule the public hearings for Monday, January 31, 2011 at 7 PM in the Land Use Office of Town Hall with a snow date of Tuesday, February 1<sup>st</sup> at 7 PM.

**Motion:** *Mr. Nelson moved to amend the prior six motions to be continued to Monday, January 31, 2011 in the Land Use Office at Town Hall at 7 PM. Seconded by Mr. Maroun.*

**Motion:** *Mr. Nelson moved to amend the motion to include a snow date of Tuesday, February 1, 2011, in the Land Use Office at Town Hall at 7 PM. Seconded by Mr. Charest, motion carried 6 to 0 in favor.*

**7. Signs Ordinance** – This proposal amends the current Sign Ordinance (Article V (A)(4)) allowing temporary real estate signs. Changes include the expanding the types of signs permitted from the current for sale only signs, and defining the sizes permitted in specific zoning districts.

Mr. King opened the last Public Hearing listed on the agenda, and asked for any comments on the proposal, Signs Ordinance.

Mr. Nelson and Ms. Ryerson noted that they were not present at the last work session when the language was amended and questioned why the word “temporary” was removed. This was reviewed and the board was in agreement that it should not have been and to add it back to the language.

Jim Leiterman read Eric Taussig’s letter dated January 13, 2011 into the record.

Ken Tatro questioned how this proposed amendment came about and if there were any means to place a rental sign in the town. Mr. King stated that this came to the board by a member of the public a few months earlier. No one realized that rental signs and lease signs weren’t allowed for the past 17 years. A majority of the people, including board members, felt they were allowed. Mr. Tatro asked if they were allowed by permit. Mr. Merhalski commented the section the board is dealing with is for the exemptions from having to get a permit. If someone wanted to place a temporary real estate sign, once it was discovered there was a difference in the ordinance based on legal opinion, they could go to the Board of Selectmen and request a sign permit. This section would mean that they were not exempt from meeting the permit requirement.

Tom Howard commented on the proposed language, speaking directly to the temporary signs used for real estate for sale. Mr. Howard referred to the propose language in which signs located in Commercial Zone C and the Residential Agricultural Zone be limited to one foot by one and one-half foot sign. Mr. Howard recommended a limitation of 2 foot by 3 foot in the village and residential zone and 3 foot by 4 foot for the commercial zone. Mr. Howard stated that historically real estate for sale signs are 3 foot by 4 foot or 4 foot by 4 foot.

Norman Larson agreed with Mr. Howard regarding the need for the signage to remain consistent. Real Estate Agencies have hundreds of existing signs and it would be costly for them to purchase the smaller signs that would only be required for use in Moultonborough.

Joe Quaresima spoke against the proposal, noting he does not want Moultonborough to look like Florida, where there are tons of signs that hide the houses.

Mel Borrin spoke to the sizes of signs and was in agreement with Mr. Howard. Realtors generally put up a 2 foot by 3 foot sign in a residential area and a 4 foot by 4 foot in a commercial area.

Ken Tatro noted his concern with the number of second homes and the number of temporary signs that may appear. He questioned what the definition of temporary was and who enforces the sign ordinance. It was noted that the board does not have a definition section at this time, and that it is on their work plan. It was noted the sign ordinance is enforced by the CEO though the Board of Selectmen.

Joel Mudgett suggested going to a larger size than 1 foot by 1 ½ foot and limiting it to only one sign per lot.

Jim Mardis stated that the real estate community has done a pretty good job of limiting the signs and commented the need for the larger signs (4x4) may be on a water front lot for visibility from the lake.

Nancy Wright questioned if the proposed change was a result of the rental signs that have been put up, or was it a legal issue. It was stated the board was not aware that there was an issue or a difference between for sale signs and for rent or lease.

Alan Ballard recommended that the board not move forward with this at this time. It has been noted that this has not been a problem and they don't need to rush into this. It was noted that Ms. Fairchild suggested a few months ago the need to review the entire sign ordinance.

After a lengthy discussion involving input from the board and the public regarding sizes (length by width or square footage) of signs in Commercial Zone C, Residential / Agricultural Zones and the Commercial Zones it was suggested by Mr. Jensen that they work with the existing language, and only add wording to include rental, lease or auction. After looking at the wording it was suggested that they strike the wording "sale of" which would then cover all real estate signs. The amended language would now read "Temporary real estate signs advertising property on which the signs are located, not exceeding three (3) feet by four (4) feet in size and limited to two signs per lot. Additionally, off premise directional signs real estate, must comply with the 1993 policies of the Moultonborough Board of Selectmen or amendments there to."

**Motion:** Mr. Maroun moved to amended the language as proposed to Item #7 and to continue to January 31, 2011, seconded by Mr. Charest, motion carried 6 to 0 in favor.

**Adjournment:** Mr. Charest made the motion to close the Public Hearing at 10:00 PM, seconded by Mr. Nelson, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant