

Moultonborough Zoning Board of Adjustment
P.O. Box 548
Moultonborough, NH 03254

(603) 476-2347

Minutes

October 1, 2008
Regular Meeting - 7:30 PM
Moultonborough Town Offices

Present: Members: Ralph Carrasco, Bob Stephens Jerry Hopkins,
Bob Bernstein, Russell Nolin
Alternates: Nicol Roseberry

I. Call to Order

Mr. Carrasco called the meeting to order at 7:30 PM, and introduced the members of the board to the public.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of September 17, 2008.
Mr. Nolin Seconded.
Motion Carried - Unanimously.

IV. New Applications

None submitted.

V. Hearings

**1. Wendy Sobel & Jonathan Kalmanoff (179-27)(Ferry Road)
Area Variance from Article IV(C)(3)**

Mr. Carrasco noted that this is a request for an area variance from Article IV (C)(3) of the Zoning Ordinance to permit waterfront access to a second residence on an offshore residential lot with 1625 feet of lake frontage.

Attorney Catherine Broderick presented the application for Wendy Sobel & Jonathan Kalmanoff. Ms. Sobel was present in the audience for the hearing. Ms. Broderick noted a typographical error on page one of the application package. It was stated that the Kalmanoff family has owned Lot 27 and Cove Island since 1966. They have actually owned it since 1957.

Ms. Broderick stated the reason why they are before the board this evening is they appeared before the Planning Board last year to ask if the Moultonborough funnel ordinance applied to this particular circumstance.

For the last 51 years the Kalmanoff family has used Lot 27 as access to Cove Island and have not developed Lot 27. Lot 27 is heavily wooded and has a rocky shore front with no beach area. They do not use the waterfront, except for launching. The Kalmanoff's acquired the adjacent lot, Lot 26 in 1986, which has no beach or waterfront rights. The purpose of the application is to request a variance from the funnel ordinance to allow them to continue the use of access from the shore that has existed for 51 years.

Board members requested clarification of the ownership of the three lots and questioned the need for the variance. Ms. Broderick went on to state there is no easement as the lots are owned by the same family. If there were two different parties it would require an easement. The applicants offer as a condition of approval to merge Lots 26 & 27, creating one large lot.

Board members again questioned the need for the variance. Ms. Broderick stated that the applicants wish to sell Lot 27 and retain access to their property on Cove Island (189-32) via an easement over lot 27.

Ms. Broderick went over her supporting arguments for each of the criteria for the granting of an area variance.

Board members questioned if the dock, and it was noted for the record that the dock is not under the purview of the Zoning Board. Any changes to the current dock would be the jurisdiction of the NH DES.

The Chairman went over the criteria for the granting of an area variance. The voting members were Jerry, Russ, Bob S., Bob B. and Ralph.

- 1) Affirmative – Unanimously.
- 2) Affirmative – Mr. Stephens, Mr. Bernstein, Mr. Carrasco
Negative- Mr. Hopkins, Mr. Nolin
- 3a) Affirmative – Mr. Nolin, Mr. Stephens, Mr. Bernstein, Mr. Carrasco
Negative- Mr. Hopkins
- 3b) Affirmative – Mr. Stephens, Mr. Bernstein, Mr. Carrasco
Negative- Mr. Hopkins, Mr. Nolin
- 4) Affirmative – Mr. Stephens, Mr. Bernstein, Mr. Carrasco
Negative- Mr. Hopkins, Mr. Nolin
- 5) Affirmative – Mr. Stephens, Mr. Bernstein, Mr. Carrasco
Negative- Mr. Hopkins, Mr. Nolin

Motion: Mr. Stephens moved to grant the area variance for **Wendy Sobel & Jonathan Kalmanoff (179-27)** with the condition that Tax Map 179 Lots 27 & 26 be merged.
Mr. Carrasco Seconded.

Discussion on the motion: Mr. Hopkins proposed additional restrictions to the motion to include the restriction in the deed that Cove Island may not be subdivided and the easement be granted only for the existing owners.

The board discussed this proposal, with Mr. Stephens opposing the requirement that the easement be granted only for the existing owners. Mr. Stephens was agreeable to restrict the easement to the existing dwelling and island, but not to the owners. Board members were in agreement that the easement should stay with the lot/island and not to the owners.

To clarify for the record, Mr. Stephens withdrew his original motion and Mr. Carrasco withdrew his second. The board discussed language for the motion which will include the restrictions proposed by Mr. Hopkins. Mr. Hopkins and Mr. Stephens crafted language to be included in the motion.

Motion: Mr. Stephens moved to approve the area variance for **Wendy Sobel & Jonathan Kalmanoff (179-27)** to permit waterfront access to a second residence on Cove Island (189-32) subject to two conditions: Tax Map 179 Lots 26 & 27 be merged into one lot, for one dwelling, and that Cove Island, Tax Map 189 Lot 32 be restricted to one dwelling unit and may not be subdivided.
Mr. Bernstein Seconded.
Motion Carried – 3 to 2 with Mr. Hopkins & Mr. Nolin opposing.

**2. Peter F. Lawlor (137-35)(24 Vonhurst Road)
Area Variance from Article III(A & F)**

Mr. Carrasco noted that this is a request for an area variance from Article III (A & F) of the Zoning Ordinance to permit two dwellings on a single lot as part of a subdivision of the 4.5 acres into two lots.

Jim Bolduc with Lepene Engineering & Surveying was present representing Mr. & Mrs. Lawlor in their request for a variance. Mr. & Mrs. Lawlor were present in the audience.

Mr. Bolduc stated they are requesting a variance to allow two dwellings on a single lot. Mr. Bolduc described the lot, stating that it is 4 ½ acres on Lake Kanasatka. There is an existing house, garage, seasonal cottage and studio. Both of the dwellings (house and cottage) have an existing water service and approved septic systems. The Lawlor's appeared before the Planning Board (PB) for a Design Review Phase to discuss the potential for a two lot subdivision. As a result of the discussion one of the criteria required by the PB was to have a soil study completed of the site. As a result of the soil study, Unit Density Calculations were completed based on the Town of Moultonborough Zoning Ordinance. These calculations indicate that Lot 35 can support 1.26 units, and proposed lot 35.1 can support 1.01 units. The proposed subdivision meets the required lake frontage. Mr. Lawlor wishes to retain the existing house and cottage on the residual lot 35, 2.25 acres. Mr. Bolduc went over his supporting arguments for each of the criteria for the granting of an area variance. Mr. Bolduc went on to explain that the cottage is only a seasonal rental property and that it has little impact on the town services, i.e. school system.

Mr. Carrasco noted that the cottage is a dwelling unit, and that the board does not take into consideration it is only used a portion of the year, as it may be utilized year round at any time.

Mr. Carrasco questioned if the "studio" shown on proposed lot 35.1 was a dwelling unit. Mr. Lawlor stated that it was not a dwelling unit, that it was a studio where Mr. Lawlor provides music lessons.

Board members questioned if the cottage were to have the kitchen removed would this be an allowable use. It was stated if the kitchen were removed from the cottage it would then become a bunk house and it would not be considered a dwelling and there would be no need for the area variance for a second dwelling.

Attorney Doria Aronson was present representing her clients, abutters Leo and Annette Lemoine. Ms. Aronson presented the board with a letter dated October 1, 2008 from Attorney Regina Nadeau stating her objections based on the reasons contained in the letter, and requested the board deny the application for variance.

Abutter Kevin Kelley stated that he was confused as to the request for the variance, and noted that he had received a notice for subdivision. It was noted for the record that Mr. Lawlor has made application to the Planning Board for a two lot subdivision and is on their agenda for October 8th. The application for an area variance is a result of lot calculations being completed on the lots as proposed in the subdivision application. The unit density for proposed lot 35 is 1.26 units, which is non-conforming to the ordinance and the PB may not approve a subdivision creating a non-conforming lot, unless an area variance has been granted by the Zoning Board of Adjustment.

The Chairman went over the criteria for the granting of an area variance. The voting members were Jerry, Russ, Bob S., Bob B. and Ralph.

- 1) Affirmative – Unanimously.
- 2) Affirmative – Mr. Hopkins
Negative- Mr. Nolin, Mr. Stephens, Mr. Bernstein, Mr. Carrasco
- 3a) Affirmative – Mr. Hopkins
Negative- Mr. Nolin, Mr. Stephens, Mr. Bernstein, Mr. Carrasco
- 3b) Affirmative – Mr. Hopkins, Mr. Stephens, , Mr. Carrasco
Negative- Mr. Nolin, Mr. Bernstein
- 4) Affirmative – Mr. Hopkins
Negative- Mr. Nolin, Mr. Stephens, Mr. Bernstein, Mr. Carrasco
- 5) Affirmative – Mr. Hopkins
Negative- Mr. Nolin, Mr. Stephens, Mr. Bernstein, Mr. Carrasco

Motion: Mr. Carrasco moved to deny the application for an area variance for **Peter F. Lawlor (137-35)** to permit two dwellings on a single lot as part of a subdivision. Mr. Stephens Seconded.
Motion Carried – 4 to 1 with Mr. Hopkins opposing.

Mr. Carrasco noted that the applicant has the right to request a re-hearing within 30 days or appeal to Superior Court within 30 days of the date of this decision.

**3. Thomas A. & Barbara G. Mason, Trustees (71-6)(451 Governor Wentworth Highway)
Special Exception for Commercial Use Article VI Paragraph D & E**

Mr. Nolin stated for the record that Tom Mason, Jr. is a customer of his and questioned if there were any objections to him sitting on the board for this hearing. No objections were noted.

Mr. Carrasco noted that this is a request for a special exception to allow commercial use in the Residential/Agricultural Zone for the operation of artesian wells for supplying water to Lakes Region Water's P.U.C. franchise area.

Tom Mason, Jr. & Jim Hambrook were present in the audience for this application. Mr. Mason stated the lot is owned by his mother and father, it is 40 +/- acres in which they intend to use sometime in the

future as a well field. They presently are doing test wells, and the property will become the ownership of Lakes Region Water in the end. They are currently doing test wells and exploratory work to apply to the State for a permit for what is known as a large well withdrawal permit for water. This process takes up to 1 ½ - 2 years. The Planning Board requested that Mr. Mason come before the ZBA this evening as there is work that has begun on the site. Mr. Mason feels that this is premature as he does not have any plans yet. Mr. Mason went on to say that they are at the point of doing the well fields and do not know if they will end up with four wells up there, or twenty wells up there, or where they will be located. The Mason's do not know if they are going to need a treatment building as they are only in the planning stages of this.

Lakes Region Water Company (LRWC) did receive permission from the State of New Hampshire DES to use one of the wells periodically this past summer to supplement the water supply presently in the old well field. This use was permitted by the state and at this point they are no longer using the well. Mr. Mason stated the project is a long term project that needs to be done, as their existing well field is no longer supplying enough water to the 800 +/- homes served by their franchise area, which includes the Balmoral and Suissevale subdivisions, plus a piece of area around that. The franchise requires that they are to serve the people within that area if they need water.

Mr. Mason continued with saying that Tax Map 71 Lot 6 came up for sale and it was purchased. The lot is convenient as it is close to the subdivision and is located adjacent to their 325,000 gallon storage tank. It appears there could be enough water on lot 6 to make it worthwhile.

Mr. Hopkins questioned the location of the 325,000 gallon tank, if it was accessible via Emerson Path. Mr. Mason stated yes.

Mr. Bernstein questioned the reason Mr. Mason was before the board if he doing anything yet. Mr. Mason stated that he has been trying to figure this out. He was asked by the Planning Board to make application to the ZBA.

The application is for a special exception for commercial use on a residential lot. The board discussed this at length. It was not clear what the proposed project would entail. Mr. Mason noted that this process with permitting could cost as much as a half million dollars. The purpose of the test wells is to determine if the wells will yield enough water to proceed with the project.

It was noted that the abutting lot, Tax Map 71 Lot 1, in which the 325,000 gallon storage tank is located on, is currently before the Planning Board for a compliance hearing. There was removal of trees in the buffer zone in order to install a water main from the wells on Lot 6 to the tank. This is what started the discussions regarding Lot 6. Was this or was this not considered a commercial activity, the installation of wells and a water main to service customers of LRWC. The PB asked the Board of Selectmen (BoS) to inspect the property for non-compliance through the Code Enforcement Officer. There have been questions raised in regards to LRWC, if they are a Public Utility and if they are required to obtain all state and local approvals. As a result of the request to the BoS an informational meeting was held on August 12, 2008 with a representative from the Public Utilities Commission, NH DES, along with Tom Mason, Betsey Patten, Carter Terenzini, Don Cahoon and Bonnie Whitney. It was stated that LRWC is a public utility, but that they still must meet state and local requirements.

After further discussion the ZBA felt that they did not have enough information submitted with the application to act on the request for a special exception and would like to continue the hearing to allow time to gather additional information. The ZBA has requested to meet jointly with LRWC, the PB, PUC, NH DES, a representative of the BoS and Town Counsel. This would allow both boards and the BoS to educate themselves with the requirements of the PUC and NH DES.

Ms. Whitney will speak with the Town Administrator and make arrangements to schedule a joint informational meeting prior to the continued hearing.

Motion: Mr. Stephens moved to continue the hearing for **Thomas A. & Barbara G. Mason, Trustees (71-6)** for a special exception to February 4, 2009.
Mr. Hopkins Seconded.
Motion Carried – Unanimously.

VI. Correspondence

- 1) Selectmen’s Draft Minutes of September 18, 2008 were noted.

Motion: Mr. Stephens moved to authorize the Chairman to act as a committee of one at the October 15th meeting for the scheduling of hearings.
Mr. Bernstein Seconded.
Motion Carried – Unanimously.

VII. Unfinished Business

VIII. Adjournment

Motion: Mr. Bernstein moved to **Adjourn** at 9:11 P.M.
Mr. Hopkins Seconded.
Motion Carried - Unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Land Use Coordinator

These Minutes have not been formally approved by the Moultonborough Zoning Board of Adjustment. Please contact the secretary after the next regularly scheduled meeting of the Moultonborough Zoning Board of Adjustment to be held on the 1st and 3rd Wednesday of each month, to learn if any corrections, additions or deletions were made.