

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

(603) 476-2347

Minutes

January 21, 2009
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. Stephens 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. Stephens moved to approve the Zoning Board of Adjustment Minutes of December 17, 2008
Mr. Hopkins Seconded.
Motion Carried - Unanimously.

Motion: Mr. Stephens moved to reaffirm the Chairman's action as a committee of one on January 7, 2009.
Mr. Bernstein Seconded.
Motion Carried - Unanimously.

IV. New Applications

None submitted.

V. Hearings

**1. Dixon Recreational Company, LLC (213-17)(53/65 Barrett Place)
Continued Area Variance from Article III Paragraph J**

Mr. Carrasco noted that this was a hearing for an Area Variance.

Catherine Broderick, Esq. was present for this hearing. Ms. Broderick stated she was representing Barry Dixon, owner of Bear Pine Woods Campground. Ms. Broderick gave a brief history of the campground, noting that it was a non-conforming preexisting, family, seasonal resort campground. They are seeking two approvals from the board, one for a variance and one special exception to make the property more conforming to the ordinance by

returning a portion of the property to residential use only and reducing the number of sites that are allowed in the campground.

Ms. Broderick noted that this property was the subject of a town enforcement action. The action was settled in October 2008. One of the reasons they are here is this is a part of their settlement to clear things with the ZBA. In 2006 the planning board approved a subdivision of the property. Once you subdivide a property you lose your grandfathered status. In order to follow through with the subdivision and maintain the campground they need a variance and special exception. In 2006 the ZBA issued a variance to allow an additional fifty (50) campsites. To date the campsites have not been built. They are proposing to reduce the number from fifty (50) to twenty (20). This will reduce the impact on site, and giving up the right to add an additional thirty (30) sites. The total number of sites will be One Hundred Twenty (120) and are outlined in red on the plan. The density will decrease from 2.59 units per acre to 2.20 units per acre. The proposal is to remove 3.42 acres, leave the remaining 54.53 acres. There will be 120 sites on 54.53 acres and one residential lot of 3.42 acres. If the board approves the variance the non-conformity will be decreased as there will be fewer campsites than currently approved.

The first application was for an area variance. Ms. Broderick addressed each of the five criteria for the granting of an area variance giving facts supporting their request.

Ms. Broderick stated the ZBA has the discretion to hear the requests for variance and special exception, and they are bound to this by the terms of the settlement agreement. They believe that this will bring resolution and closure to this property and Mr. Dixon's relationship with the town.

Ms. Broderick asked the Chair if the board would like her to continue on with the application for special exception at this time as the two applications do go together. The special exception speaks to use and the impact that this would have on the neighborhood. It was the decision of the board that the two applications are relating to the same property and are tied together. The board will need to apply different criteria for each and will vote on the criteria for each application separately.

**2. Dixon Recreational Company, LLC (213-17)(53/65 Barrett Place)
Continued Special Exception Commercial Use within the Residential/Agricultural Zone**

Ms. Broderick noted the second application is for a special exception. The ordinance requires a special exception to alter a preexisting commercial use in the Residential/ Agricultural zone. Ms. Broderick addressed each of the seven criteria for the granting of the special exception giving facts supporting their request. Ms. Broderick answered any questions from the board at this time.

Mr. Hopkins stated that as written record will show, he was one of the members who had voted against the granting of the variance to increase the number of sites from 100 to 150. However, he does see this as a less intensive change than what has been previously approved. Mr. Hopkins requested that the board consider crafting the motion before the board goes through the criteria for one or the other, so that they may know what they are voting on.

Abutter John McCall questioned if the information regarding the negotiations with the town were made privy to the public. Ms. Broderick stated a copy of the terms of the settlement agreement for the enforcement action that was filed against Mr. Dixon is a part of the planning board file, and is a matter of public record. Ms. Broderick gave a brief overview of the settlement, stating that they and Town Counsel made an agreement in order to settle the enforcement action the town brought against Mr. Dixon. The agreement was, in order to follow through with the subdivision approval granted by the planning board in 2006, the property would require a special exception and a variance from the ZBA. In the alternative, Mr. Dixon has right to develop the property with 150 sites and would have to do some restoration work on Lot 1. Mr. McCall's concerns would be related to the site plan and addressed at the planning board.

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 – Unanimously.
- 3a) Affirmative – Unanimously.
- 3b) Affirmative – Unanimously.
- 4) Affirmative – Unanimously.
- 5) Affirmative – Unanimously.

Motion: Mr. Stephens moved to grant the area variance for **Dixon Recreational Company, LLC (213-17)** for relief from Article III, Paragraph J of the Town of Moultonborough Zoning Ordinance.
Mr. Bernstein Seconded.
Motion Carried – Unanimously.

Regarding the request for Special Exception, Mr. Carrasco noted that there is a prior approval for a special exception on the property. There were items that were discussed in previous hearings, such as the sale of RV's, the placement of park models etc. Mr. Nolin stated that he was not a member of the board at the time the approval was granted and would like to hear what the proposal was in 2006. Mr. Hopkins noted that the prior approval is null and void at this time, as once he places the subdivision on record, none of the special exceptions approved before stand at this time, and is why they are here tonight. Ms. Broderick stated that she did not agree with the statement made by Mr. Hopkins regarding the sale of recreational vehicles. It was her understanding that the board was considering the question of the sales of recreational vehicles at this time, and whether or not that will be a continued use. Ms. Broderick suggested to the board that the commercial use of the property which is non-conforming is still in place and that the commercial use includes the sale of recreational vehicles. The board stated that was only allowed by the previous special exception and with the lot being modified, the approvals are negated and it is no longer applied to the new lot.

Ms. Broderick stated the special exception is specific to the alteration of the campground sites. By implication it doesn't erase Mr. Dixon's right to continue to sell recreational vehicles. That itself is a separate special exception that he was granted by the ZBA. What they are saying is that if the lot is reduced he is proposing to give up the right to develop the campground as 150 sites. The board disagreed with this interpretation, stating that at this point in time he is not entitled to develop the 150 sites as the board just approved the variance that negated the previous approval of 150 for 120. Ms. Broderick stated the ordinance states a new or amended special exception is required. Mr. Carrasco clarified that he was asking if they wished to amend their application to maintain the sale of recreational vehicles.

The board took testimony from Mr. Dixon stating that there has only been the sale of one RV within the past five years, a park model was sold three years ago. Mr. Nolin questioned if the sales are with his campground customers, and no outside sales. Mr. Dixon stated the sales are on-site for a particular site. There is no sales office or sales area, and he has no franchise at this time. The board questioned what number of sites which are seasonal. Mr. Dixon stated 62 sites are occupied seasonally. The percentage of seasonal campsite to transient sites will be approximately 60 seasonal to 40 transient. The board felt that this was a business plan item and should not be regulated by the board. The campground is operated seasonally from May to October.

Ms. Broderick stated that she wished to amend the application for special exception approval to continue to operate the commercial property as a resort, seasonal family campground resort and to continue the right to sell recreational vehicles on-site.

Mr. Carrasco polled the board to go into deliberative session at this time: Mr. Hopkins – Aye; Mr. Nolin - Aye; Mr. Stephens – Aye; Mr. Berstein – Aye, Mr. Carrasco – Aye.

The issues that the board would like to see included with the motion are the months of operation, May – October inclusive, that the commercial setbacks be recognized as a buffer and not have commercial use in them, the sales of RV's that exist on approved sites, and / or ordered for on-site use specifically, with no inventory that is not on an approved site. Mr. Hopkins requested that if approved, this special exception be recorded in the notes on the site plan to be recorded. This will make it clear for everyone, what has been approved on the site.

Mr. Carrasco polled the board to come out of deliberative session at this time: Mr. Hopkins – Aye; Mr. Nolin - Aye; Mr. Stephens – Aye; Mr. Berstein – Aye, Mr. Carrasco – Aye.

Motion: Mr. Stephens moved to approve the special exception for **Dixon Recreational Company, LLC (213-17)** subject to the following restrictions being noted on the site Plan: 1) months of operation May – October inclusive 2) commercial setbacks be applied and those areas to be used as a buffer only 3) On-site sales of existing RV's or RV's be brought on-site and placed on an approved campsite for the purpose of sales within the park.
Mr. Hopkins Seconded.

The Chairman went over the criteria for the granting of a special exception. The voting members were Jerry, Russ, Bob S., Bob B. and Ralph.

- 1) Affirmative – Unanimously.
- 2) Affirmative – Unanimously.
- 3) Affirmative – Unanimously.
- 4) Affirmative – Unanimously.
- 5) Affirmative – Unanimously.
- 6) Affirmative – Unanimously.
- 7) Affirmative – Unanimously.

Motion Carried – Unanimously.

Mr. Carrasco noted the next step for Mr. Dixon is to make application to the Planning Board for site plan approval.

3. **Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)**
Special Exception pursuant to Article VI Paragraph A(3) and D
4. **Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)**
Area Variance from Article III Paragraph J
5. **Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)**
Area Variance from Article III Paragraph A, Table I

Mr. Carrasco noted this three hearing were for Jonathan C. Gilman, as Trustee of the Norway Point Trust 243-28. All of the applications apply to the Trust property and the back ground information provided applied to all three applications.

Mr. Gilman was present as Trustee, noting that Karen McGinley, Esq. and Paul Darbyshire, surveyor, were present for the hearing.

Attorney McGinley noted that she was representing Jonathan Gilman as Trustee of the Norway Point Trust. Mr. Gilman gave a brief history of the property noting that his father had purchased the property just after World War II and formed the Norway Point Trust. Three other families were brought into the trust over the next several years. The trust owns the properties and the four families occupy the land and own their individual camps. In 1960 the additional back land was added to the trust. More recently one of the members of the Trust, Susan Wallis desired to leave the trust. To be able to sell a portion of the trust property that represents her share they need approval of the board for a special exception and two variances. Mr. Gilman noted that all four families were represented this evening here tonight. Mr. Gilman thanked the board for hearing them this evening.

Mrs. McGinley referred to the plan prepared by Paul Darbyshire, noting it is shown on two sheets. Included with the application was a sketch done by Mr. Darbyshire that shows the agreement that was done among the four beneficiaries in 1960 of how the front property (the only piece they owned at that time) would be divided if they ever had to and own it in fee. Mr. Darbyshire has done site work on the property in preparation for a possible subdivision.

Mr. Darbyshire gave a brief description of the property. The property is approximately fifty-seven (57) acres. He is in the process of completing a boundary survey of the entire parcel. There is over 4,000 feet of frontage on Lake Winnepesaukee and is accessed by Rupert Road and Long Point Road. Norway Point Road, which is a private road, goes through the property. There is an existing cottage on the peninsula and three other cottages on the waterfront. The proposal is to subdivide off a 1.42 acre or 58,370 square feet and encompasses Susan Wallis cottage. They are proposing an easement area of 0.9 acres attached to the lot for that will be able to support a septic system, which has been approved by the State. This would be pumped from the Wallis cottage to the site. Eventually there will make application to subdivide a back lot to be determined at a later date which should not require ZBA approval. Wetlands have been delineated on the site and the topography is shown on the plan.

Mrs. McGinley spoke to the approvals needed from the board in order to subdivide the 1.42 acres to be included with the Wallis home. They will require an area variance from Article III Paragraph J as the proposed lot does not meet the 4 to 1 ratio, an area variance from Article III Paragraph A, Table I, as the proposed lot does not meet the minimum lot size requirements and a special exception pursuant to Article VI Paragraph A(3) and D, to allow three dwellings to remain on the residual parcel.

The Trust is seeking relief from the minimum lot size requirements. Pursuant to the MZO, a lot that contains a septic system must meet the minimum lot size requirement provided in Table I of Article III, Section A, which is determined based upon the lot's slope and soil type. According to a review of the Property performed by experts retained by the Trust, Parcel A consists of HV-Hollis-Charlton soil and has a conservatively approximated slope of between eight percent (8%) and fifteen percent (15%). Accordingly, as provided in Table I, the MZO requires Parcel A to contain one hundred thousand (100,000) square feet. See Article III, Section A, Table I. therefore the need for the variance. It was noted that if the proposed lot had the septic system installed off site then the minimum lot size required would be 40,000 square feet. Due to the cost of the septic, Ms. Wallis does not wish to install the septic at this time and therefore they are seeking board approval for variance.

The Trust is seeking relief from a dimensional regulation under the MZO and is requesting an area variance. However, pursuant to Article III, Section J of the MZO, a lot's length cannot "exceed the width of the lot by a multiple of more than 4." As can be seen from the attached plan, Parcel A is located on a narrow peninsula that is surrounded on three sides by Lake Winnepesaukee. From the proposed boundary line to the tip, this peninsula is over eight hundred (800) feet in length. At the same time, the overwhelming majority of the peninsula is

less than one hundred (100) feet in width. Accordingly, it is not possible for Parcel A to comply with Article III, Section J and, thus, the requested variance is required.

In completing this subdivision, the Trust will create three lots: (1) one upon which the Wallis house is located (that is, Parcel A); (2) one that will be located in the back of the property; and (3) one that will remain titled in the Trust’s name and will consist of the remainder of the Property (“Trust Parcel”). As can be seen on the attached Plan, however, upon subdivision, the Trust Parcel will contain three (3) of the four (4) pre-existing houses, thus rendering the parcel a commercial use under the MZO. See MZO, Article III, Introduction (explaining that “[a]ll uses other than one and two family residential or agricultural will need to follow the requirements of commercial uses.”). Accordingly, because the Trust Parcel is located entirely within the residential/agricultural zone, the Trust needs to obtain this special exception in order to complete its subdivision. See MZO, Article VI, Section (A)(3) (providing that “a commercial use is allowed only by Special Exception from the Zoning Board of Adjustment and Site Plan Approval from the Planning Board.”).

Mrs. McGinley addressed the criteria for each of the three applications individually starting with the variance from Article III Paragraph J , then an area variance from Article III Paragraph A, Table I, and finishing with the special exception pursuant to Article VI Paragraph A(3) and D, to allow three dwellings to remain on the residual parcel.

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 – Unanimously.
- 3a) Affirmative – Unanimously.
- 3b) Affirmative – Unanimously.
- 4) Affirmative – Unanimously.
- 5) Affirmative – Unanimously.

Motion: Mr. Hopkins moved to approve the Area Variance for the Trustee of the **Norway Point Trust (243-28)** for relief from Article III, Paragraph J of the Town of Moultonborough Zoning Ordinance as it applies to proposed Parcel A.
 Mr. Stephens Seconded.
Motion Carried – Unanimously.

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 – Unanimously.
- 3a) Affirmative – Unanimously.
- 3b) Affirmative – Unanimously.
- 4) Affirmative – Unanimously.
- 5) Affirmative – Unanimously.

Motion: Mr. Hopkins moved to approve the Area Variance for the Trustee of the **Norway Point Trust (243-28)** for relief from Article III, Paragraph A, Table 1 of the Town of Moultonborough Zoning Ordinance as it applies to proposed Parcel A.
 Mr. Stephens Seconded.
Motion Carried – Unanimously.

The Chairman went over the criteria for the granting of a special exception. The voting members were Jerry, Russ, Bob S., Bob B. and Ralph.

- 1) Affirmative – Unanimously.
- 2) Affirmative – Unanimously.
- 3) Affirmative – Unanimously.
- 4) Affirmative – Unanimously.
- 5) Affirmative – Unanimously.
- 6) Affirmative – Unanimously.
- 7) Affirmative – Unanimously.

Motion: Mr. Hopkins moved to approve the Special Exception for the Trustee of the **Norway Point Trust (243-28)** seeking relief pursuant to Article VI, Paragraph A(3) and D of the Town of Moultonborough Zoning Ordinance for residential uses.
Mr. Stephens Seconded.
Motion Carried – Unanimously.

It was noted that the Trust has not reached a decision regarding the proposed lot to be subdivided on the rear portion of the lot. When the field work is completed and the location of the proposed lot determined, this will require a new special exception for the residual parcel as required in the prior hearing for Mr. Dixon.

VI. Correspondence

- 1) Joint Loss Management Committee Minutes of November 18, 2008 were noted.
- 2) Planning Board Draft Work Session Minutes of December 15 & 17, 2008 were noted.
- 3) Planning Board Draft Public Hearing Minutes of December 17, 2008 were noted.
- 4) Planning Board Draft Minutes of January 14, 2009 were noted.
- 5) Selectmen’s Draft Minutes of December 18, 2008, January 8 & 15, 2009 were noted.

VII. Unfinished Business

VIII. Adjournment

Motion: Mr. Stephens moved to **Adjourn** at 9:32 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.