

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

(603) 476-2347

Minutes

May 6, 2009

Regular Meeting - 7:30 PM
Moultonborough Town Offices

Present: Members: Bob Stephens, Jerry Hopkins, Russell Nolin, Ray Heal
Alternates: Nicol Roseberry
Excused: Members: Bob Bernstein

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

Mr. Stephens noted the passing of prior Chairman Elliot Lyon. The board observed a moment of silence in honor of Mr. Lyon.

Mr. Stephens appointed Nicol Roseberry to sit on the board with full voting privileges in place of Bob Bernstein.

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of April 1, 2009.
Mr. Nolin Seconded.
Motion Carried - Unanimously.

Motion: Mr. Nolin moved to reaffirm the Chairman's action as a committee of one on April 15, 2009.
Mrs. Roseberry Seconded.

Mr. Hopkins stated that he was curious to the correct process, questioning if a member has concerns that the application is the incorrect vehicle to be coming before the board should they ratify the Chairman's action, or ratify it and address it in the hearing mode.

It was the opinion of the Chair that this should go forward to the hearing, and if in the process of the hearing the type of application may appear to not have been correct, based on the testimony, that is where it should be addressed.

Motion Carried – Unanimously.

IV. New Applications

**1. Chris Maroun (135-19)(14 Moultonboro Neck Road)
Special Exception pursuant to Article VI Paragraph C(1)b.xviii**

This is a request for a special exception to allow the processing, storage and sale of cordwood/firewood, mulch and related landscaping materials.

The Chairman and the Land Use Coordinator have reviewed the application package and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **Chris Maroun (135-19)** for a special exception and to schedule a hearing for May 20, 2009 to be hearing #1.
Mrs. Roseberry Seconded.
Motion Carried – Unanimously.

**2. Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)
Area Variance from Article III Paragraph A, Table I**

This is a request for an area variance from Article III Paragraph A, Table I of the Zoning Ordinance, to allow the Norway Point Trust to subdivide its property.

The Chairman and the Land Use Coordinator have reviewed the application package and it appears complete for board action.

Motion: Mr. Nolin moved to acknowledge the application of **Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)** for an area variance and to schedule a hearing for May 20, 2009 to be hearing #2.
Mr. Hopkins Seconded.
Motion Carried – Unanimously.

**3. Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)
Special Exception pursuant to Article VI Paragraph A(3) and D**

This is a request for a special exception pursuant to Article IV, Paragraph A(3) and D of the Zoning Ordinance, to allow the Norway Point Trust to subdivide its property.

The Chairman and the Land Use Coordinator have reviewed the application package and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **Jonathan C. Gilman, as Trustee of the Norway Point Trust (243-28)** for a special exception and to schedule a hearing for May 20, 2009 to be hearing #3.
Mrs. Roseberry Seconded.
Motion Carried – Unanimously.

**4. Peter & Christine Gennaro (194-2)(246 Krainewood Drive)
Area Variance pursuant to Article III Paragraph B1 & B2**

Mrs. Roseberry stepped down from the board for this application.

This is a request for an area variance from Article III Paragraphs B1 & B2 of the Zoning Ordinance, to permit the location of a proposed garage within 50' (33.5' proposed) of the centerline of the improved surface of Clearwater Point Road, and within 20' (13' proposed) of the lot's sideline setback.

The Chairman and the Land Use Coordinator have reviewed the application package and it appears complete for board action.

Motion: Mr. Hopkins moved to acknowledge the application of **Peter & Christine Gennaro (194-2)** for an area variance and to schedule a hearing for May 20, 2009 to be hearing #4.
Mr. Heal Seconded.
Motion Carried – Unanimously.

Mrs. Roseberry returned to the board at this time with full voting privileges.

V. Hearings

1. **Robert M. Hammond (23-14)(1195 Whittier Highway)** **Equitable Waiver of Dimensional Requirements**

Mr. Stephens stated that this was an application for an equitable waiver of dimensional requirements.

Attorney Don Smith presented the application for Mr. Hammond. Mr. Smith gave a brief background on how they had arrived at the Zoning Board. Mr. Hammond had approached the Planning Board on an informal basis to relocate his sign on his property. The Planning Board indicated this would require a site plan amendment. Upon the Planning Board reviewing the site plan, the issue arose of an apartment that exists over one of the buildings. Mr. Hammond wishes to come into compliance with site plan, and has received a conditional approval for a boundary line adjustment to acquire land from the airport. During the hearing process with the Planning Board the issue came up that there were four apartments over one commercial building and a fifth apartment above a second commercial building. This issue came up in 1990 when Mr. Hammond went to construct the addition with the fifth apartment above. He was granted a building permit that was conditional upon Planning Board approval. Mr. Smith stated that it is unclear as to what exactly they were looking for at that point. Whether they were looking for him to submit a site plan showing the building, or whether the issue was that there was going to be an additional apartment, where it was initially granted as a commercial building. Mr. Smith referred to the minutes from the 90's discussing the issue, noting that in May 1990, the Planning Board rejected the application. He does not feel that they knew how to handle it at that point, and doesn't think they thought it was site plan. Mr. Smith believes the issue became if the site could support the additional apartment.

Mr. Hammond resided in the apartment from 1990 to 2003, and there has been a tenant in there since then.

Mr. Smith stated the reason they are before the ZBA is to try and bring this particular matter into compliance so they can go forward and complete the boundary line adjustment. Mr. Smith stated the reason he submitted an application for an equitable waiver, first noting that in most instances most people think

about buildings within a setback, more of a building issue. In Mr. Smith's opinion this is also a mathematical issue. The question is, mathematically speaking, if the lot is not in compliance (they are applying for a waiver from Article III, Paragraph A, which is lot size) it's a mathematical issue with the calculation of the size of the lot and the type of soils that exist there in order to support what is there. Mr. Smith interprets this as a dimensional requirement based on mathematical calculations, which is why he submitted this application.

Mr. Smith noted that this is one area where the legislature has allowed for the Zoning Board to basically give approval going backwards. Under RSA 674:33-a, Paragraph II, it states there are four requirements which you have to meet to get equitable waiver. You can skip a and b, if in fact "the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected." From the file and according to Mr. Hammond there has never been any notice of violation of this matter at all. There has never been a cease and desist or anything received stating that Mr. Hammond was on notice. Mr. Smith referred to paragraph II of the statute, which allows the board to grant an equitable waiver when something has been non-compliant for over ten years without any enforcement action.

Mr. Smith spoke to the issue of public nuisance, the only thing that could be drawn out of this, is there a health issue. Mr. Smith believes this is what is looked at when you talk about the size of the lot, and soils to allow the additional unit to exist.

Mr. Smith noted Joanne Coppinger submitted a letter dated March 24, 2009, which was attached to the application. Mrs. Coppinger, P. E. noted that she has looked at the lot and stated in her letter that the greatest testimony as to the capacity of this lot to handle the existing sewage load is the fact that the existing sewage system has had no problems. Mrs. Coppinger went on to explain that she had calculated the size of the lot that would be required by the State, if there were no regulations in Moultonborough, and it is well in excess of what would be required based on soils and slopes. She went on further to explain that she had calculated what would be required in the Town of Moultonborough, which turns out to be 28% less than what is required by the Town of Moultonborough. Mrs. Coppinger feels the problem lies in the definition of unit. She believes in the past the boards have just talked about units, and there is no definition in our Zoning Ordinance. Mrs. Coppinger noted that while a studio apartment is a unit, and a four bedroom home is a unit, but they're certainly not equal, and not apples to apples. Even though the calculations show the lot can support 1.74 units, that really is 1.74 four-bedroom homes. That is how she arrived at the conversion of 1044 gallons per day (gpd).

Mr. Smith reiterated that this has been here for 20 years with no enforcement action taken against the property, and this is a mechanism for the board to essentially put this into compliance.

Mr. Hopkins stated that Mr. Smith talked about section II of RSA 674:33-a, but he did not talk about section I, which is what he could not get past. The first sentence says "When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement..." It seems to Mr. Hopkins that those two words, dimensional requirements, should be an indication that this is not the appropriate vehicle.

Mr. Smith referred to roman numeral IV, "Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements..." He believes that this is a mathematical requirement, given lot size and soil type. If you were coming before the board today to develop the site it would be a variance going forward.

This issue of the proper application was discussed between Mr. Smith and Mr. Hopkins at length with Mr. Hopkins making the following motion:

Motion: Mr. Hopkins moved that the board not consider this application on the grounds that the application is inconsistent with RSA 674: 33-a,I, refund the applicants fee and suggest that the applicant consider a variance application.

Mr. Stephens called for a second on the motion. There was none.

Mr. Stephens asked at this time if there were any further discussion of the board. There were none.

The Chairman went over the criteria for the granting of an equitable waiver of dimension requirements. The voting members were Jerry, Russ, Nicol, Ray and Bob S.

- a) Negative – Jerry
Affirmative – Russ, Nicol, Ray and Bob.
- b) Negative – Jerry
Affirmative – Russ, Nicol, Ray and Bob.
- c) Affirmative – Unanimously.
- d) Affirmative – Unanimously.

Motion: Mr. Nolin moved to approve the equitable waiver of dimensional requirements for **Robert M. Hammond (23-14)**.
Mr. Heal Seconded.
Motion Carried – 4 to 1, with Mr. Hopkins opposing.

VI. Correspondence

- 1) Planning Board Minutes of April 22, 2009 were noted.
- 2) Board of Selectmen Minutes of April 2, 9 & 16, 2009 were noted.
- 3) Board of Selectmen Workshop Minutes of April 16, 2009 were noted.

VII. Unfinished Business

VIII. Adjournment

Motion: Mrs. Roseberry moved to **Adjourn** at 8:18 P.M.
Mr. Heal Seconded.

Motion Carried - Unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Land Use Coordinator

Wednesday of each month, to learn if any corrections, additions or deletions were made.