

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

Regular Meeting

March 3, 2010

Minutes

Present: Members: Bob Stephens, Russell Nolin, Jerry Hopkins, Ray Heal,
Bob Bernstein (arrived at 7:38)
Alternate: Nicol Roseberry; Town Planner, Dan Merhalski

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. Mr. Stephens noted that Mr. Bernstein indicated he would be arriving a few minutes late for the meeting. The Board went out of order on the agenda and reviewed correspondence at this time.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of February 17, 2010, seconded by Mr. Nolin, carried unanimously.

Motion: Mr. Nolin moved to approve the Zoning Board of Adjustment On-site Minutes of February 20, 2010, seconded by Mr. Heal, carried unanimously.

IV. New Applications

V. Hearings

Mr. Nolin stepped down from the Board at this time. Mr. Stephens appointed Nicol Roseberry to sit on the board with full voting privileges in place of Mr. Nolin.

1. David S. Severance & Julianne P. Daniels (152-2)(133 Severance Road)
Special Exception for Commercial Use

Mr. Stephens stated this was an application for a special exception to allow the operation of a dog daycare and dog training facility.

Dave Severance and Julianne Daniels were present to present the application. Mr. Severance stated they were here for a special exception, noting they had started this as a Home Occupation and feels that they still qualify for a Home Occupation under Article VII, A (4) of the Zoning Ordinance. Mr. Severance stated that this would be visible from the outside but feels they still qualify for a Home Occupation and in his reading of the ordinance it is clear they do need a special exception to run their home occupation on the premises. Mr. Severance stated the property is located in the Residential / Agricultural Zone, but could not

find a definition of an agricultural purpose in the ordinance. Mr. Severance feels that training dogs is consistent with agricultural uses.

Mr. Severance went on to describe the proposed use of the property which is a dog daycare and dog training facility. They are not a boarding kennel and there will be no dogs overnight. The proposed hours are Monday through Friday, 7AM to 5 or 6 PM. There will be someone present with the dogs at all times. They do not anticipate more than 25 dogs on the property at one time. Mr. Severance explained the layout of the property, abutting homes and the natural buffers on site. Mr. Severance requested the board conduct an on-site visit of the property prior to the board making their decision.

Ms. Daniels gave a brief presentation of the time and type of activities that will take place on the property. Noting there is an inset on the plan showing the detail of the area to be used inside the existing farm house as well as the fenced yards for dogs and training area. Also noted was the open field in which agility training will take place.

Mr. Severance noted they had operated the daycare last year and had come to the Town Hall for a sign permit. At that time he spoke with the Code Enforcement Officer regarding the use of the property. Mr. Severance was told that the use would require a special exception. They had also held an open house on the property which had activities and vendor booths, with some 40 dogs and families in attendance.

Mr. Stephens took questions from the board at this time.

Mr. Bernstein commented while he had no questions at this time, the applicant had requested an on-site visit and he may have questions after the on-site visit.

Motion: Mr. Bernstein moved to schedule an on-site visit on Friday, March 12, 2010 at 3 PM for the property of David S. Severance & Julianne P. Daniels, TM 152, Lot 2, 133 Severance Road, seconded by Mr. Hopkins, carried unanimously.

Mr. Stephens questioned if the proposed use was a licensed activity. Mr. Severance stated no. He had checked on the requirements and there are no regulations or laws to license the proposed use.

Mr. Stephens asked the applicant if they knew the decibel level for a dog bark. Ms. Daniels stated she did not know, but would estimate fewer than 60 decibels.

Mr. Stephens questioned what the distance was from the propose location to the nearest abutters house. Mr. Severance stated approximately two tenths of a mile.

Mr. Stephens took questions and comments from the public at this time.

Natt King questioned if this was an application for a Home Occupation or an application for Special Exception for Commercial Use. Mr. Stephens stated the application is a request for a Special Exception as specified in the Zoning Ordinance, Article VI, A (4). Mr. Stephens read that section of the ordinance into the record as "Outside the Commercial Zones, the remainder of the town is a Residential /Agricultural Zone, where a commercial use is allowed only by Special Exception from the Zoning Board of Adjustment and Site Plan Approval from the Planning Board."

Mr. Severance stated he felt they were requesting an approval for a Home Occupation, but stated he would amend the application as necessary as needed.

Mr. Stephens questioned the number of anticipated employees, as this related to the requirements for a home occupation. Ms. Daniels stated if needed, there will only be one employee.

The board discussed the application regarding home occupation verses special exception. Mr. Merhalski stated if the use were to meet the requirements of a home occupation they would not need to appear before the Planning Board. If the board grants a special exception for commercial use, it will require site plan approval by the Planning board. Mr. Stephens questioned if there was a reason why Mr. Severance had not applied for a special exception for commercial use. He stated he did not feel it was necessary and did not want to meet the strict requirements of a site plan review.

Ms. Whitney stated the applicant had been referred to the Land Use Office for a Special Exception for Commercial use as he did not feel the proposed use met the requirements of a home occupation.

Dave Ames questioned if the applicant should have filed for an appeal of the Code Enforcement Officers decision that this was not a home occupation. Mr. Cahoon was not present to comment on this.

Earl Bickford, Cloudview Drive, commented that that area is beautiful, peaceful and quiet and that he is against this request. He does not want the noise of barking dogs or additional traffic.

Natt King noted his concerns that if something like this proposal were approved that it will open the door for it to grow or be sold. Mr. King does not feel this is an appropriate use for a Residential / Agricultural Zone, and once the initial approval is granted by the ZBA it cannot be prevented from a natural expansion. Ms. Daniels responded that is why they want an approval for a home occupation so that it would be kept on a smaller scale. Mr. Severance replied that if they were to change the use they would have to come back before the board and they have no intent on opening a boarding kennel.

Bill Burrows, 163 Severance Road, stated they are the closest residence to the property, and they are approximately 150-200 yards from the site. Mr. Burrows stated his concern is with the noise level. He had made his mind up 8-9 months ago when there was a dog that barked non-stop for a week. Mr. Burrows commented the open house was very loud last year and that he is against this proposal. Mr. Severance replied that the barking dog did not come from their property. He stated Mr. Burrow's property is further away than 150-200 yards, and understands his concerns.

Linda Nolin, 344 Old Mountain Road, commented she lives on Route 171 and heard a dog barking all summer long. Mrs. Nolin questioned what the applicant was going to do with the dog manure. Mr. Severance stated there is a depicted on the plan for a dog waste compost area.

Russ Nolin, 344 Old Mountain Road stated Shannon Brook is not depicted on the plan and questioned if the dog waste compost area was located within the flood plain area for Shannon Brook. Mr. Nolin provided the board with a copy of a 2006 Aerial Photo showing the location of Shannon Brook in relation to the property. Mr. Severance stated he has researched the possibility of purchasing a plastic storage tank for refuse.

Becky Morgan, 129 Severance Road noted her concerns regarding traffic, stating if there were 25 dogs at the daycare that would be up to 100 trips past her house daily. Ms. Morgan noted the road is very narrow and questioned if the town would widen the road. Mr. Severance commented the end of the drive is quite wide.

Dawn Thurston, 144 Severance Road read a letter into the record from her husband noting their concerns regarding devaluation of their property.

Eric Taussig, 13 Hemlock Point stated that a special exception runs with the land and that it is transferable. Mr. Taussig noted his concerns and does not believe the proposed use belongs in this area and while there may be a need for this use in Moultonborough, it should be placed in the commercial zone, not in a Residential/Agricultural zone.

Holly Burrows, 163 Severance Road, read a letter into the record from her sister, Marcy Weeks, 152 Severance Road, noting her concerns and that she is opposed to this request.

Caleb Rudolph, 139 Severance Road, stated the barking dog last summer did come from the Severance property. Mr. Rudolph noted his concerns regarding traffic. Mr. Rudolph questioned if the owners of the Morrill Home subdivision were notified of the hearing, as they may be concerned with devaluation of their property. Mr. Stephens stated the applicant met the requirements for notification.

Russ Nolin commented the plan shows the ROW to be removed and questioned if that was part of the requirement for the subdivision previously approved by the Planning Board. It was noted this was not part of the review of the application this evening.

Mr. King asked about the odor from the refuse. Mr. Severance stated they plan to pick up the dog refuse on a daily basis and as noted before he has researched the possibility of purchasing a plastic storage tank for refuse and that would be a good reason to get a closed dog waste container.

Motion: Mr. Hopkins moved to continue the Public Hearing for David S. Severance & Julianne P. Daniels (152-2) to March 17, 2010, and to schedule an On-site visit for March 12, 2010 at 3 PM, seconded by Ms. Roseberry, carried unanimously.

Mr. Nolin returned to the Board at this time with full voting privileges.

2. Continuation of Public Hearing - Robert & Gail Hughes (217-1)(225 Eagle Shore Road) Expansion of Non-Conforming Primary Structure

Ms. Roseberry did not participate in the Public Hearing for Robert & Gail Hughes (217-1).

Mr. Stephens stated this was a continued hearing for Robert & Gail Hughes, noting the Board held an on-site visit at the property February 20th.

Dave Ames of Ames Associates was present in the audience representing the Hughes. Mr. Ames provided the Board with two photos of the property taken from the dock.

Mr. Stephens asked if there were any questions from the board or public, it was noted there were none. The board went into deliberative session to discuss each of the criteria for the granting of the special exception. The Board went into deliberative session at 9:12 and came out at 9:15.

During discussion Mr. Nolin stated that he felt this request should be a request for an area variance based on further review of Mr. Merhalski's prior memo.

Dave Ames questioned why a board member felt that this should be a request for variance. He asked this in relation to future clients who may wish to apply for an expansion. Mr. Stephens noted there would be a discussion this evening following the hearings.

There was no further input from the board or audience.

Motion: Mr. Hopkins moved to continue the Public Hearing for Robert & Gail Hughes (217-1) to March 17, 2010, and to direct staff to draft a Notice of Decision granting the special exception for the expansion of a non-conforming primary structure, seconded by Mr. Bernstein, passed 4 to 1 with Mr. Nolin opposing.

VI. Correspondence

- 1) Board of Selectmen Draft Minutes of January 28th 2010 were noted.
- 2) Cristina Ashjian noted the Conservation Commission was sponsoring the “Taking Action for Wildlife Workshop on March 8, 2010 at 7:00 PM at the Moultonborough Public Library.

VII. Unfinished Business

- 1) Mr. Stephens noted this was Mr. Bernstein’s last meeting as a Board Member and presented him with a letter of appreciation for his time served on the Board. Mr. Hopkins noted the need for an Alternate member for the ZBA and asked if Mr. Bernstein would be willing to serve as an alternate. Mr. Bernstein agreed to serve as an alternate on an as need basis.

Motion: Mr. Hopkins moved to appoint Mr. Bernstein as an Alternate Member of the Zoning Board of Adjustment effective March 12, 2010, seconded by Mr. Nolin, carried unanimously.

- 2) The board held a discussion regarding the manner in which they have been applying Article VII, B (3) “Expansion of Non-Conforming Primary Structures”. Mr. Merhalski had indicated in a prior memo that the concept of this ordinance is in relation to “Expansion” of a primary structure, not demolition and rebuilding of primary structures. He understand that the past experience of the Board has shown that eventually, the question becomes one of when is an expansion no longer safer than a new structure if too much is taken away, and the Board may have addressed this as a policy that he does not know about, questioning if the Board should take further consideration as to whether the letter of the law and the spirit of the law are met. Board members spoke to intent of this section of the ordinance and were in agreement if it was not clear in the ordinance that there should be proposal presented for change that would be submitted as amendment to the zoning ordinance and voted on by the town. After discussing this, a majority of the Board requested a written opinion from Town Counsel regarding this matter. The Board authorized Mr. Merhalski to request an opinion from Counsel.

VIII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:46 PM, seconded by Mr. Hopkins, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant