

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

Regular Meeting

March 17, 2010

Minutes

Present: Members: Bob Stephens, Jerry Hopkins, Russell Nolin, Kevin M^cCarthy;
Alternate: Nicol Roseberry, Bob Bernstein; Town Planner, Dan Merhalski
Excused: Member: Ray Heal

I. Call to Order

Mr. Stephens called the meeting to order at 7:30 PM.

II. Pledge of Allegiance

III. Organizational Meeting

Mr. Stephens introduced the members of the board to the public and welcomed Kevin M^cCarthy as the newly elected member of the Board. Mr. Stephens noted the term for Ms. Roseberry's appointment for alternate has terminated. Ms. Roseberry was present this evening and expressed her interest to serve again as an alternate on the board.

Motion: Mr. Hopkins moved to re-appoint Ms. Roseberry as an Alternate Member of the Zoning Board of Adjustment for a term of 3 years, terminating on March 31, 2013, seconded by Mr. Stephens, carried unanimously.

Ms. Roseberry and Mr. Bernstein were then sworn in as Alternate Members of the Zoning Board of Adjustment by Mr. Hopkins, who is authorized to administer the oath required as a Justice of the Peace.

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

IV. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of March 3, 2010, seconded by Mr. Nolin, carried unanimously.

Motion: Mr. Nolin moved to approve the Zoning Board of Adjustment On-site Minutes of March 12, 2010, seconded by Mr. Hopkins, carried unanimously.

V. New Applications

VI. Hearings

Mr. Stephens noted there were two continued hearings on the agenda, the Severance hearing first and the Hughes hearing second. As the Hughes hearing would be short, Mr. Stephens requested that the Board go out of order and act on the Hughes hearing first. Board members were in agreement with this.

1. 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).

The board reviewed the Draft Notice of Decision prepared by the Town Planner, as directed by the board at the hearing on March 3rd. There were no changes made to the draft decision.

There was no other discussion regarding this hearing.

Motion: Mr. Hopkins moved to approve the application of **Robert & Gail Hughes (217-1)** for the expansion of a non-conforming primary structure, as detailed in the Draft Notice of Decision, and authorize the Chairman to sign the Notice of Decision, seconded by Mr. Stephens, passed by a vote of 3 in favor (Stephens, Hopkins, M^cCarthy), 0 opposed, and 2 abstentions (Nolin, Roseberry).

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

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

Mr. Stephens stated this was a continued hearing for David Severance & Julianne Daniels, for a special exception for commercial use.

Dave Severance and Julianne Daniels were present to present the application. Mr. Severance stated as a matter of procedure, he had submitted a letter dated March 4, 2010, to the board requesting an amendment to their application to reflect that they are requesting a special exception for a Home Occupation.

Mr. Stephens stated the board was in receipt of Mr. Severance's letter. Mr. Stephens noted for the record, included in the member's packet, was a copy of the Code Enforcement Officers letter dated September 2, 2009 which the CEO had sent to Mr. Severance via Certified Mail. There was an attempt of delivery three times, and returned to the CEO unclaimed. The letter indicated it was the belief of the CEO that the conditions he viewed on the property did not meet the requirements of a home occupation and would require a special exception from the zoning board, and site plan approval from the planning board. From the time of the receipt of the letter, Mr. Severance had 30 days to appeal the CEO's decision to the zoning board, which has passed. Mr. Stephens stated that it was the judgment of the board that the application does not fall under the category of a home occupation, and therefore the board would be reviewing the application under the criteria as it applies to a special exception for commercial use.

Mr. Hopkins commented that he did not believe the special exception applies to a change of use, and if the applicant was seeking relief from the home occupation portion of the ordinance, believes the application should be for a variance, and that the application should be amended for a variance.

Mr. Severance commented for the record that he respectfully disagreed with the board and their reading of the zoning ordinance. Mr. Severance felt that it was clear under paragraph 4, that this was a home occupation under the special exception. He believes it meets all the criteria for a home occupation, visible from the outside of the property. Mr. Severance stated they had gone through paragraph 4 at the prior meeting, noting one purpose for the on-site visit was to view the property and verify the amount of square footage of the home that was being used for the purpose. Mr. Severance chose to move on with his presentation. Mr. Severance introduced Eric Reuter, an acoustical engineer to do a presentation for the board and public.

Mr. Reuter stated he was an acoustical consultant with Reuter Associates, noting the applicants had contacted him to look at the property and come up with some estimated levels of dogs barking at adjacent properties. Mr. Reuter provided graphics from Google Earth, showing the nearest residences. Mr. Reuter conducted his test near the Burrows property and the Rudolph property. The measurements and calculations were taken from these two properties. Mr. Reuter said that he had completed a "Dog Noise Impact Study" of the Severance property and presented his findings to the board. Mr. Reuter explained his methodology, criteria and what levels are generally considered to be acceptable or intrusive. Mr. Reuter noted he had taken the existing sound level at the street in front of the Burrows and Rudolph properties, admitting that this was not a comprehensive study, but a very small sample. The L90 for a 15 minute sample at the Burrows was 42 dBA, and 53 dBA at the Rudolph property. Mr. Reuter then applied a three step process and arrived with a calculated dog level. Twenty-five (25) barking dogs being 36 dBA and 40 dBA respectfully and two to three dogs 26 dBA and 30 dBA respectfully. Mr. Reuter noted the calculated dog level is lower than the ambient level he measured. The dogs would be audible, but it would not be a significant increase over the existing conditions. Mr. Reuter also noted there were additional considerations to be taken into account, the facility will only operate during daytime hours on week days, the dogs will be supervised all the time and the small dog area is significantly more shielded by the building and that will contain approximately half of the client dogs. Mr. Reuter commented that the applicant has indicated that if the dogs all started barking they would bring the dogs into the house until they could be controlled. Mr. Reuter answered questions from the board.

Mr. Hopkins questioned what the noise level was 50 feet away from the speaker Mr. Reuter had placed at the Severance property. Mr. Reuter replied about 108 dBA. Mr. Hopkins asked for a clarification on the process Mr. Reuter had used to calculate the reduction and proposed levels. Mr. Hopkins commented that he could not understand how there could be an ambient level at 42 dBA without the barking and a predicted level of 36 dBA. Mr. Hopkins then asked if the placement of the test device was placed on a knoll, what would be the difference. Mr. Reuter estimated in the 2 dBA range.

Ms. Roseberry questioned what Mr. Reuter would anticipate the decibel level of a dog barking would be. Mr. Reuter replied the 14 dogs measured at ten feet were in the 90 dBA range.

Mr. M^cCarthy questioned if the equipment was moved to the Burrow's porch what the dBA level would be. Mr. Reuter stated it would increase 2-3 dBA.

Mr. Stephens made comments regarding the LEQ, in reference to the average reading of sound over time verses a loud sharp bark. Mr. Stephens questioned the test sound that was produced for the test completed. Mr. Reuter stated the sound produced for the study was greater than the level of a dog barking, significantly 20 dBA.

In closing Mr. Reuter commented the predicted levels were lower than the ambient levels at the time of testing. There were comments regarding ambient sound verses annoying sounds, such as wind blowing verses a dog barking.

Marcy Weeks, 152 Severance Road, had a question regarding acoustical shadows, and asked what level the test speaker was placed at. Mr. Reuter replied at the height of a dog's mouth. Ms. Weeks provided the board with a handout regarding acoustical shadows.

Natt King, 98 Caverly Road, noted there was a comment made by Mr. Reuter that the town did not have a noise ordinance, and that he was under the impression that the Town does have such an ordinance. Mr. Merhalski replied there is a Town ordinance relative to Unnecessary Noise, and it doesn't apply to animals. Mr. Merhalski listed what was included or specifically excluded in the ordinance.

Kath Blake commented she was on Severance Road during the time that Mr. Reuter said he had done his testing. She noted there was a lot of traffic and asked if that was taken into consideration in the test. Mr. Reuter stated yes. He did one minute measurements and no cars passed by during that time. Ms. Blake asked while Mr. Reuter was out on the site, if he had heard any other noise other than cars or the sound he made for the test. Mr. Reuter stated aircraft noise.

Marcy Weeks questioned if there is any data on an annoying noise verses a noise that is not annoying? Mr. Reuter replied this falls under a couple of different categories, such as back up alarms, and whether the noise is all the time or sporadic.

Bruce Roberts, 39 Cloudview, stated there was a comment made regarding the dogs barking simultaneously and questioned the number of dogs. Mr. Reuter replied his testing considered all 25 dogs barking simultaneously. The dogs will be supervised at all times and if an event occurs that instigates all 25 dogs or a large number of dogs to bark, then the applicants have indicated they would bring the dogs inside until the disturbance has passed or they are under control.

Bill Burrows, 163 Severance Road, requested a new study be done from his back porch.

Susan Merrifield, 39 Cloudview, commented regarding annoying noises verses non-annoying sound, and feels that wind is an aesthetically pleasing sound and a barking dog is disrupting.

Vanessa Vittum, 31 Cloudview, asked why were the two houses chosen today for the test, and why wasn't the Morgan house chosen, as it is on the same level as the Severance property. Mr. Severance commented on the abutters to the site and stated why they chose the two homes.

Natt King commented that he felt all of those present this evening are abutters. They may not be a direct abutter, but are affected by this application.

Denise King, 98 Caverly Road, noted her concerns regarding traffic and the de-valuation of property values. Mrs. King read the definition of an abutter into the record, stressing the sentence "the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration".

Diane Johnston, of Center Sandwich, addressed the board regarding the application and gave a personal/character reference for Julie Daniels. Ms. Johnston submitted a letter of record to the board in regards to the proposed K-9 Funplex.

Dawn Thurston, 144 Severance Road, read a letter into the record on behalf of her and her husband noting their concerns regarding the impact the proposal would have on their property.

Mr. King read a letter into the record which had been signed by 42 +/- members of the community who express their concerns and objections with the proposed project.

Chris Morrill commented the analysis presented this evening did not take into consideration the psychological effects the noise of barking dogs will have on the neighbors, noting the barking will be irritating and intrusive to anyone that can hear the dogs.

Mrs. King read a letter into the record on behalf of Greg and Karen Dearth, 71 Cloudview Drive.

Mr. Merhalski requested clarification, commenting at the last meeting the applicant had requested an amendment to their application from VI A (4) for commercial use, to VII A (4) under home occupation, special exception. This was touched on earlier tonight, and Mr. Merhalski asked if the applicant was withdrawing that request and that this review was back under VI A (4) for commercial use. Mr. Severance addressed this from a procedural point, stating his request was to have the board deliberate on the original application that was filed and did not understand why the CEO's letter was not brought up at the first hearing. Mr. Merhalski specifically asked the applicant if he wished to proceed under an application of VII A(4) for home occupation, or did they want to withdraw their request to proceed under VI A (4) commercial use, special exception. Mr. Severance stated he felt there were a number of mistakes made and at this point Mr. Severance withdrew his letter dated March 4th asking that the board consider the application this evening. Mr. Severance realizes if he did not do this the board would not make a decision this evening.

Motion: Mr. Hopkins moved to go into deliberative session, seconded by Ms. Roseberry, carried unanimously.

The board took a five minute break at this time from 8:50 – 8:55.

The board went into deliberative session at 8:55 PM. The board then discussed each of the seven criteria in deliberative session.

Motion: Mr. Hopkins moved to come out of deliberative session, seconded by Mr. Stephens, carried unanimously.

The board returned to public session at 9:12 PM.

Caleb Rudolph made a comment regarding the increase in the amount of traffic that would pass by his home that the proposed use would create.

Peter Morrill, Morrill Homes noted his concerns regarding diminution of value to his conditionally approved 14 lot subdivision located across the street from the proposed K-9 Funplex.

Motion: Mr. Hopkins moved to continue the Public Hearing for David S. Severance & Julianne P. Daniels (152-2) to April 7, 2010, and to direct staff to draft a Notice of Decision **Denying** the special exception for the failure to meet the criteria, seconded by Mr. Bernstein, carried unanimously.

Mr. Stephens stated the procedure of the board is that they will meet on April 7th, review the Facts of Findings drafted by the Town Planner and approve the Notice of Decision and authorize the chair to sign the Notice of Decision.

Mr. Stephens noted at that time, the applicant has the right to request a motion for rehearing within 30 days of the date of decision of the zoning board of adjustment.

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

VII. Correspondence

1) Mr. Stephens stated the NH OEP Annual Spring Planning & Zoning Conference will be on Saturday, May 8, 2010 and were encouraged to attend. Those wishing to attend should contact Mr. Merhalski.

2) Planning Board Minutes of February 10 & 24, 2010 were noted.

VIII. Unfinished Business

Mr. Stephens stated this was the business portion of their annual Organizational Meeting. As Senior Member, Mr. Hopkins called the Organizational Meeting to order. There was a question regarding members who were eligible to vote, elected verses alternates. It was the consensus of the board to defer the Organizational Meeting to April 7, so that all five elected members may be present to vote for the election of Chairman and Vice Chairman.

IX. Adjournment

Motion: Mr. Bernstein made the motion to adjourn at 9:22 PM, seconded by Mr. Hopkins, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant