

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

Regular Meeting

February 1, 2017

Minutes

Present: Members: Bob Stephens, Robert St. Peter, Russ Nolin
 Alternates: Richard Jenny, Jerry Hopkins
Excused: Members: Bob Zewski, Ken Bickford
 Alternate: Paul Onthank, Nick DeMeo
Staff Present: Carol Fucarile, Executive Assistant

I. Call to Order

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the Board to the public. Mr. Stephens appointed Jerry Hopkins and Richard Jenny to sit on the Board with full voting privileges in place of members Bob Zewski and Ken Bickford.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of January 4, 2017, as written, seconded by Mr. Jenny, carried unanimously.

IV. Hearings

1. Kevin Quinlan, Balmoral Improvement Association (99-102) (294 Paradise Drive)
 Variance from Article VI., Commercial Uses, E. Special Exceptions, (1) b

The Chair stated that this is an application submitted by Kevin Quinlan, President of Balmoral Improvement Association for a Variance for relief from the fifty (50') foot setback.

Dan Ellis from Ames Associates represented the Applicant, Kevin Quinlan. Mr. Ellis stated that, as presented at the January 4, 2017 meeting, this is a proposal to use a residential lot for purposes of providing additional parking to the shared beach at Balmoral. Subject lot is uniquely suited to that proposed use given its proximity to the beach and that it is bordered on three sides by roads. This proposed parking use is considered a commercial use; it's specific designation is "Recreation Use Outdoor-High Impact." It is not possible to meet the fifty (50') foot buffer requirement on this lot given its small size. If the fifty (50') buffer were applied from all property lines, only a small space in the center would accommodate only three (3) or four (4) parking spaces. It was determined, at the January 4, 2017 hearing, that they need a Variance Application to grant relief from the fifty (50') foot width requirement of the buffer. If this Variance Application is approved, then the Board can continue to consider the merits of the Special Exception Application. This proposal is to include a twelve (12') foot wide buffer surrounding all sides of the property. Mr. Ellis feels that a twelve (12') foot buffer, well vegetated landscaped, will serve to satisfy all the purposes of the buffer requirement. Concerning the five (5) criteria of the Variance, the Variance will not be contrary to public interest, public health, safety or welfare because granting it will not alter the essential character of the neighborhood because the parked

vehicles for the beach use are already there on the street and it will lessen congestion on the streets and enhance safer pedestrian movements to the beach and improve the quality of the neighborhood by removing many parked vehicles from neighbor's front yards and views. Given the stated purpose of the Ordinance, it appears that this request is in line with the public's interest and its spirit. Mr. Ellis also stated that the controls would need to be in place for the use - keeping it dedicated for beach parking only. Mr. Ellis feels that, as far as the spirit of the Ordinance, a berm and vegetated buffer would contain the noise, light and other impact at this site. The loss to the Applicant would be great because they could not pursue the Special Exception for the dedicated beach parking area. The values of the surrounding properties would not be diminished because of unsafe, chaotic and disrupted practice of parking along the street for beach access. It would be replaced by a safer, controlled and less disruptive parking area solution. Mr. Ellis feels that granting this Variance may contribute to increase values for surrounding properties. Enforcement of the Ordinance would result in unnecessary hardship because of the way the lot is situated ("Y" shape). The fifty (50') foot buffer with requirement would render the lot unusable for the Special Exception use of beach parking area. The fifty (50') foot buffer with requirement does not serve its purpose in a fair and substantial way. The vegetation and berm proposed do mitigate the disruption site of the Ordinance, therefore, relief can be granted to this property without frustrating the purpose of the Ordinance. The use is reasonable. To speak to some of the concerns: Adding parking is not the only part of this solution – better enforcement is needed for this to accomplish its goal of alleviating some of the traffic, congestion and parking on the street.

The Chair noted that there is a two hundred fifty (250') foot shoreline setback and asked if there was any state permitting required. Mr. Ellis said there would be. Mr. Hopkins confirmed that the buffer is twelve (12') feet. Mr. Ellis believes that the ten (10') feet shown on the plan is a building setback.

Other questions from the Board include: How many vehicles have been towed in the last year since there are no parking signs posted? Mr. Quinlan responded that there has been discussion with the Moultonborough Police Department and local towing companies who do not know if they can or cannot tow on Paradise Drive and Pleasure Lane and who is liable; this is something they are still trying to work out between the parties. How many houses are there now? Mr. Quinlan responded that there were four hundred thirty-eight (438). A question arose about what will be done with the well? Mr. Quinlan stated that the well would be taken out, but the garage would remain (remodeled, fixed up and used for storage). There are state requirements dealing with abandoning drilled wells. Discussion pursued concerning the well to be abandon, even though there is no state requirement for it to be abandon. Mr. Ellis stated that the parking lot would not be put on top of the well and it wouldn't be a problem as its location will be affect it. Mr. St. Peter confirmed that there isn't room for a fifty (50') foot buffer, but if there was room for a fifty (50') foot buffer, you would only have to put twelve (12') feet of vegetation in order to accomplish the same goal. The Chair discussed the enforcement issue and some mechanical means of prohibiting parking along the road – the idea is to eliminate a problem, not to add additional parking and still maintain the problem. Mr. Quinlan stated that barriers would most likely be placed in areas where parking shouldn't be and signs would be posted on the Paradise Drive side. The berm with the vegetation would serve as a barrier to parking; barriers would also be placed on the Pleasure Lane.

The Chair opened the hearing for public input.

Jim Nestor, abutter at 24 Pleasure Lane, questioned the width of Pleasure Lane. Mr. Ellis confirmed that the gravel was measured at twenty-two (22') feet wide, and the width of Paradise Lane is twenty-four (24') feet. Mr. Nestor requested to see notes or measurements. The plan is based on the survey. The distance from any body of water to this lot is about two hundred thirty (230') feet at the closest point. Mr. Nestor asked Mr. Ellis what the distance was from a certain body of water to Shannon Brook, and Mr. Ellis stated that it was more. The Chair noted that they must go through Shoreland Protection for a permit to allow that, and the Board can make this a condition; a construction permit would not be granted without appropriate state permits. Mr. Nestor asked if an appeal could be done concerning the water. Mr. Nestor stated that parking on both sides of Pleasure Lane on a Saturday, Sunday or holiday is unbelievable. Mr. Nestor has never seen a car towed or ticketed, but has noticed the

security guard have someone move a car, but then another one pulls in – no enforcement. Mr. Nestor feels the addition of twenty-two (22) more spots, will not come close to curing this problem, but does agree that there is a parking problem. Mr. Nestor has concerns about the “gravel” parking lot because of the noise from the cars. Mr. Nestor asked the Board to vote as if they were living where he lives – would they want it? Mr. Nestor would like the lot to remain as a buildable house lot and asked if any of the Board have visited the property – some have. Mr. Nestor asked how high the buffer would be. The Chair responded that the plan shows approximately between one foot and sixteen/eighteen inches, but it also shows vegetative plantings. Mr. Ellis stated that they are proposing a berm of eighteen inches to twenty-four inches above original grade and bushes on top of that. Mr. Nestor asked about the fence status. Mr. Ellis said there is a proposed five-foot fence along the property line that abuts the two residential properties as well as additional plantings. Mr. Nestor asked about gates, and Mr. Quinlan stated that both, the entrance and exit would be gated and locked, as the proposed use is during beach hours only and generally only on the weekends. The vegetation would be placed in a staggered way to help establish a barrier for lighting and noise. The Association would discuss with the abutter what type of fence they would like, but it would not go all around the lot. Mr. Nestor asked if it would be a gravel parking lot and would there be a consideration for hot top? Mr. Quinlan replied that it would be gravel and there would be stops for the cars to recognize the parking spots, and hot top would be prohibitive and wouldn't see that happening for years down the road. The Chair reminded everyone to address the fifty (50') foot setback, and that is the subject at hand. Some of these questions pertain to the next phase, and Mr. Nestor asked the Board to remember the questions he has already asked. Mr. Nolin asked about the measurements between the driveways. Mr. Nolin, who measured the distance himself, offered to remeasure the distance with Mr. Ellis. Mr. Ellis stated that they did not survey that distance, it was scaled.

Jamie Gourgoumis, abutter at 288 Paradise Drive, stated that he took some measurements today and asked if bushes were to be put in at his fence line? Mr. Ellis stated that they propose shrubbery along the property line and a new stockade fence.

Carol Gourgoumis, abutter at 288 Paradise Drive, stated that she is representing abutters that can't be here tonight. The Chair asked for their names for the record/clarification purposes. Mrs. Gourgoumis named: Jim Gourgoumis, 19 Pleasure Lane, Tony and Paula Borgasano, 297 Paradise Drive and Ronald Perrotti, Paradise Drive who gave her permission to represent them. The Chair asked if these were people she had spoken to. Mrs. Gourgoumis offered to show the Chairman her cell phone. Mrs. Gourgoumis stated that she agrees with everything Jim had said, but felt that the value of all the abutters homes would be diminished and change the whole character of the neighborhood. Mrs. Gourgoumis stated that it is not an unnecessary hardship; it is a house lot and there is nothing unique about this lot of land, and there is no reason for it to be anything other. Mrs. Gourgoumis asked the Board if they would like to live next to a parking lot? Mr. St. Peter asked how the home values would be diminished since people already park there? Mrs. Gourgoumis answered because it is a designated parking lot and there will only be a select few that can park in this lot. Mr. Hopkins stated that some people that are now parking on the road would probably use this parking lot, even though you will still have parking on the roads, but this additional parking would mitigate some of that problem. Mrs. Gourgoumis doesn't believe twenty (20) parking spaces would alleviate anything. Mr. Jenny asked if more than twenty (20) cars can park on the road on a Saturday. Mr. Nestor responded by estimating, depending on weather, on a good day, on Pleasure Lane, on both sides, about thirty (30) to fifty (50) cars; some days are better than others, and there is no one to police it. Mr. Nestor stated that this parking lot is not going to alleviate the parking problem whatsoever. There is public parking behind the clubhouse that no one uses. Mr. Jenny stated it would be a nice place for people to park against the berm. Mr. Ellis stated that it was already acknowledged that this is one prong to alleviating this problem, and the other prong is that there needs to be enforcement.

The Chairman asked if there were any other questions from the Board or any other questions or comments germane to this specific application from the public? It was noted that there were none. The Board went into deliberative session to discuss each of the criteria for the granting of a variance at 7:47

PM and came out of deliberative session at 8:11 PM, during which time there are to be no comments from the public unless the Board feels there is information needed to evaluate the criteria, then they may solicit an inquiry from the public.

The Chairman told the public that he would give them a brief opportunity to comment on statements made during the deliberative session. Mr. St. Peter reminded the public that they are only to comment on voting on the fifty (50') foot buffer (not on the Special Exception).

Mr. Nestor stated that this lot is not currently used to park cars, it is privately owned by an association member and cars are only parking on the side street of Pleasure Lane. You cannot park in this lot. He has never seen a car towed from there. If the entrance is to be on Paradise Drive into the parking lot, the lights will shine in his direction because the exit is on Pleasure Lane. Right now, his house is not affected by any headlights whatsoever because of the way the traffic flows. Mr. Nestor stated that Mr. Jenny had stated that the problem has been ongoing for many years and it will never change, but this property was never parked on, it is a grassy area, there was a house on it since 1954 or 1956 (one of the first houses in the association), the house was recently torn down because it was falling apart. Mr. Nestor said this is a buildable lot and is private property. No problem with Paradise Drive, the problem is on Pleasure Lane. The owner had cut down trees and put logs along so people couldn't pull into his property. Mr. Nestor is in favor of progress, but this will create a severe problem. If the Board allows cars to park on both sides of Pleasure Lane, people won't be able to get out of the lot, and asked the Board who is policing this? Mr. Nestor feels that Mr. Nolin understands the problem because he has gone and looked at it. Mr. Jenny stated that he realizes that the property itself was never used as a parking lot. Mr. Quinlan clarified that he is representing the association, not him personally, and the association consists of about four hundred thirty-eight (438) homes. During the annual meeting, there was a show of hands asking how many people were interested to pursue this, and there was about ninety-eight (98) percent of people raised their hands in favor.

Motion: Mr. Hopkins moved to grant the request for a Variance for Joe Costa, 294 Paradise Drive, MBLU 099-102, and further to close the public hearing. I also move to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting. Seconded by Mr. St. Peter, motion passed, four (4) in favor (Stephens, St. Peter, Jenny & Hopkins), and one (1) opposed (Nolin).

Mr. Stephens noted that this approval is strictly for the fifty (50') foot setback and noted that there is a thirty (30) day right of appeal and would begin tomorrow morning. Appeals can be made if there is a determination that there was a procedural error or information that was not considered factual information that was not considered.

2. Continued Public Hearing for Kevin Quinlan, Balmoral Improvement Association (99-102) (294 Paradise Drive) - Special Exception - Article VI.D & VI.E

The Chair stated that this was a continuation of an application submitted by Kevin Quinlan, President of Balmoral Improvement Association for a Special Exception from the MZO Article VI.D (Commercial Use within a Residential /Agricultural Zone) to allow the construction of a parking lot to serve the shared beach, on a residential lot. Proposed use is "Recreation Use Outdoor-High Impact," which is allowed by Special Exception, which was before the ZBA on January 4, 2017.

The Chairman explained the difference between a Variance and a Special Exception.

The Chairman also stated that on January 4, 2017 the Board discussed the requirement of the fifty (50') foot setback, and it was determined, at that time, to seek counsel as to whether or not that necessitated a Variance which is why the Board went back to the Applicant and required a Variance to

cover the fifty (50') foot setback issue. That has been adjudicated and, therefore, allowing the Board to continue to hear the Special Exception.

Dan Ellis from Ames Associates was present this evening representing the Applicant Kevin Quinlan, who was also present for the hearing. Mr. Ellis felt that the Applicant has covered all the basis, went through the criteria thoroughly at the January 4, 2017 meeting, touched on all the major points tonight, and is available to answer questions.

Mr. Jenny asked how to address the mechanical means of stopping cars from parking on the road? Mr. Quinlan responded that Pleasure Lane currently has large tree trunks bordering the side of the property, but they do not extend far enough out to the edge of the road bed. The Association is proposing to put barriers along the road bed and with the vegetated buffer, it would prevent parking on Pleasure Lane. On Paradise Drive, do a similar telephone poles alongside where they could be removed if the town needed access. A new water main was just installed, so there is no reason to dig that up in the future. Mr. Jenny asked about the hours of operation. Mr. Quinlan stated that it would be the beach times which are essentially 6:00 AM to 10:30 PM and only on weekends, although a special exception may be made for the July 4th and Memorial Day weekends, and during the week, the swing gates would be closed and locked. The vegetative buffer would come up to those gates on both sides (entrance and exit). Mr. Quinlan stated that there would be no night lighting. Mr. Jenny also stated he has a concern with the height of the berm and feels that should be high enough to block headlights which are eighteen (18") inches to two (2') feet, so if you have a three (3') foot berm, it should block headlights. Mr. Quinlan stated that he would consider that for one of the conditions on the approval if granted. Mr. Jenny would like the Association to discuss with the neighbors in the area to come up with landscaping that is acceptable to both parties. He would prefer not to see six (6") inch shrubs every five (5') feet. Mr. Quinlan's idea is to create a curtain there, and will be happy to discuss it further. Mr. Jenny asked if the Association would consider hot topping the parking lot. Mr. Quinlan stated that it would be looked at although gravel was suggested at this time, and then the Association would determine hot top down the road. If it is a condition for the paving, then the Association would do that eventually. Mr. Ellis clarified "gravel." The same basic construction as Pleasure Lane is what would be used on the parking lot. Mr. St. Peter addressed the statement made by Mr. Nestor concerning the cars leaving at night and whether or not bushes there would be adequate to cut the headlights. Mr. Stephens reminded the Board that they have option to condition approvals.

The Chairman opened the hearing for public input.

Mr. Nestor questioned the gravel/dirt and whether the lines would be spray painted and asked what the width of the parking spot would be? The Chairman responded by saying that there would curbs in front. Mr. Ellis explained that the spaces on the plan show ten (10') feet wide. Mr. Nestor has concerns with the noise that cars make when they travel over gravel. Mr. Nestor is all for this in a certain degree that if things are taken care of, and one would be a hot topped parking lot, the gates are closed before 10:30 PM, and a fence put around the whole parameter of the parking lot to prevent headlights shining on any of the adjacent properties. Mr. Nestor agrees with everything Mr. Nolin has said; he feels that Mr. St. Peter and Mr. Jenny has a wrong opinion of this whole place. Mr. Nestor does not agree with the width of Pleasure Lane – not even close. Mr. Nestor feels that Mr. Quinlan has a problem also because the cars are now parking towards his house. Mr. Jenny asked if barriers could be placed on Pleasure Lane to prevent parking? The Chairman stated that this is an Association issue and not a town issue. Mr. Nestor is concerned about kids on golf carts and four wheelers that is supposed to be policed but isn't and some kid could get hurt. Mr. Nestor has to be very careful coming out of his driveway now, and on weekends it is worse. Mr. Quinlan responded to Mr. Nestor's point by saying that it was indicated earlier that barriers would be put along the edge of Pleasure Lane on the side of the parking area that would further reduce any ability to park along that side. The parking on Pleasure Lane is up to the Association. The Chairman stated that if any vehicles were parked on Pleasure Lane it would be complicated when coming out of the parking lot and asked if there was any way to make that exit easier? It was stated that the barriers are to be placed so that the exit is protected. The Chairman asked if the

Association would be amenable to a combination of berm, low fence and growth? Mr. Quinlan stated that a six (6') foot fence all around the perimeter would be far cheaper than plantings and berms if that would be amenable as they are looking to satisfy the requirements of the Board and the Ordinances that say they need to shield from light. Mr. Hopkins stated that they just voted a twelve (12') foot vegetation buffer, but would not have voted the same way if they had reduced the fifty (50') foot buffer to a stockade fence. The Chairman took his question off the table. Mr. Ellis stated that someone suggested a thirty-six (36") inch high berm and vegetation on top of it and he has no issue with doing that because that would take care of the headlight issue. Mr. Nestor asked if both the exit and the entrance can be on Paradise which is a wider street? Mr. Quinlan responded by saying the Association doesn't have a preference as to the entrance or the exit. He felt that the traffic would have an easier time turning in on one side and out on the Pleasure Lane. Mr. Quinlan suggested to Mr. Nestor that a stockade fence would be placed on his side to block the lighting if need be. The Chairman stated that is an Association issue.

The Chairman asked if there were any additional questions or comments from the public or the Board members. It was noted there were none. The Board went into deliberative session at 8:38 PM and came out of deliberative session at 9:14 PM.

The Chairman stated that the specific site is an appropriate location for the use of structures. Structures and activities contained on the site shall be screened away from view on all sides by a vegetative buffer, and in this case, the Board has given the Variance on the fifty (50') foot, if the site is in a residential/agricultural zone.

Mr. Hopkins wanted clarification: The Board has the option of putting restrictions in the Notice of Decision, and he proposes the following to be put on the Notice of Decision if this is voted to pass: That the hours of use be specified as the 6:30 AM to 10:30 PM, Saturdays, Sundays and holidays, and that it will be locked with bar gate. A three (3') foot high berm housing twelve (12') foot vegetation sufficient to block light pollution on the abutters property. Lastly, to strongly suggest enforcing a no parking ban on Pleasure Lane. The Chairman felt that the Board doesn't have authority over the last restriction, and stated that the only criteria that governs them is the five or six criteria that are in front of the Board. Mr. St. Peter is not convinced that if this is granted and there is a parking lot there, that means that everything else is fixed, but the Board doesn't have any say in fixing the parking problem, and wanted the public to understand that the Board cannot make a judgment that fixes the parking.

The Chairman closed the deliberative session, and told the public if they feel strongly about something that they need to make a comment, he will allow it, but asked them to be brief and not redundant.

Mr. Ellis stated that the premise of this application is a proposed commercial use in a residential zone so the character of the proposed use is different than the surrounding properties. Criteria #3 says that the use shall be compatible with the character of the neighboring land uses, not the same, and it is their opinion that with the discussion of the berm, landscaping and the restrictions that were discussed that it is making this particular commercial use compatible with the surrounding land uses.

Carol Gourgoumis, abutter at 288 Paradise Drive, stated that this is a house lot and there are two garages there, so it is a buildable lot and something that can be used as residential. Mr. St. Peter responded by saying that there are parking complaints and nothing is done about it. Carol Gourgoumis stated that the parking has gotten worse, but they don't park on Paradise Drive because the police would ticket them, but they do park on Pleasure Lane. Mr. St. Peter asked the Board members, am I correct that we heard that people park on both roads, not just on one? Mr. Hopkins answered saying that we heard that at one time from testimony, but most people say it is only on Pleasure Lane. Carol Gourgoumis stated that people do park where this lot is because it is vacant and on the grass on Paradise Drive, but it is illegal. Mr. Quinlan stated that the idea here is to eliminate the parking all around that lot, and the only way to do that is with a physical barrier so that you cannot access the grass or the dirt. Right now, he cannot put a physical barrier there because the Association does not own the lot. Mr. Nestor wants the

Board to understand that Pleasure Lane is a private road. The Chairman stated that it is a public way, but maybe privately maintained. Mr. Nestor expressed his concern about the golf carts and four wheelers and that they are not supposed to be on the road, but on Pleasure Lane you are allowed to drive down to the beach and it is a horror show. They are not allowed on Paradise Drive which was turned over to the town. Mr. Nestor felt that because it is winter time, there aren't more people at this meeting. The Chairman explained that Mr. Nestor's description of a public way and what is and what is not allowed is not correct, and the golf carts and four wheelers are not allowed on a public way. Mr. Nestor asked why the Association allows it? The Chairman answered that it was an Association issue. Mr. Quinlan stated that the bylaws were changed in 2014, they are being enforced, and from time-to-time, people violate them; we are asking the police to stop, ticket and patrol the areas, and they have done some of that as they have given warnings to people.

The Chairman stated that House Bill 86 will be going before the Legislature as to whether you vote on individual criteria or whether you vote on the entire package. HB 86 is going to do more specifically to Variances and is going to go back to the old method where you vote on each criteria individually, and if you vote No on one of the five (5) criteria, you would not be allowed to vote in the affirmative to pass a given Variance. This HB is just being proposed. Each town approaches it differently, and when things get to superior court, the judges find that the towns are doing it differently, so they are trying to standardize things. We have all voiced opinion on a variety of the criteria and special exception, a motion needs to be made (would prefer the motion to be made such that the majority vote of the Board will be in the affirmative). Mr. Hopkins confirmed: If the Board makes a motion to approve and the motion is denied, the Board should make a different motion.

Motion: Mr. Hopkins moved to deny the request for a Special Exception for Joe Costa, MBLU 099-102, and further to close the public hearing. I also move to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting; seconded by Mr. St. Peter, motion passed, four (4) in favor (Nolin, St. Peter, Jenny & Hopkins), and one (1) opposed (Stephens).

The Chairman reminded the Applicant of the right of appeal.

V. Correspondence. None.

VI. Unfinished Business

1. Chairman Stephens reminded the members of the scheduled "Meet and Greet" with Town Counsel on Wednesday, February 8th at 1:30 PM

VII. Adjournment

Motion: Mr. Stephens made the motion to adjourn at 9:31 PM, seconded by Mr. Nolin, carried unanimously.

Respectfully Submitted,
Carol Fucarile
Executive Assistant