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Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

**Appeal from Administrative Decision by Code Enforcement Officer,
Building Permit approved on 12/19/2011 for Map 200 Lot 12**

February 15, 2012

Applicants: Irene B. George, Trustee of the Irene George Trust et al, 4323 Argonne Drive, Fairfax, VA 22032;
Gail Childs, PO Box 418, Meredith, NH 03253-0418
Douglas & Stephanie Desjardins, 6909 Wake Forest, College Park, MD 20740

Location: Kona Bay Road, Moultonborough, NH (Tax Map 200, Lot 12)

On February 1, 2012, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Irene B. George Trust, Gail Childs and Douglas & Stephanie Desjardins (hereinafter referred to as the "Applicant" and "Interested Party Applicants) for an Appeal of an Administrative Decision by the Code Enforcement Officer, Building Permit approved on 12/19/2011 for Map 200, Lot 12 to construct a single family dwelling.

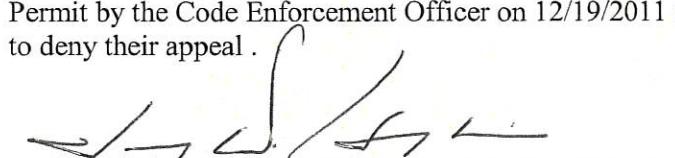
Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located on Kona Bay Road, Moultonborough, NH (Tax Map 200, Lot 12).
- 2) The applicant is an abutter to the property at Map 200, Lot 12, the lot in question.
- 3) The applicant and interested party applicants were represented by Atty. Christopher T. Meier.
- 4) The lot is located in the Residential/Agricultural Zoning District.
- 5) The lot contains 0.88 acres, has 196 +/- ft. road frontage and approximately 200 ft. of shore frontage on Lake Winnipesaukee.
- 6) The lot was created by subdivision in 1971, prior to the enactment of Zoning on October 15, 1985, with eleven other lots in the subdivision plat.

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- 7) The lot is subject to a Court Order that, in part, states that the lot is buildable with certain conditions also contained in the Court Order.
- 8) The lot is encumbered by the right of other lot owners in the subdivision of access to the shore front (beach area) for their enjoyment, which rights have also been clarified in the aforementioned Court Order.
- 9) Atty. Meier argued for the Applicants. He stated the subject lot should not have been issued a building permit because it did not meet the requirement to have additional shore frontage for each subdivision lot owner that has access rights over the subject lot, stating that the Code Enforcement Officer erred in his interpretation of Zoning Ordinance Article IV, Waterfront Property, C. Minimum lot dimensions for each waterfront lot.
- 10) Atty. Meier also argued that the Code Enforcement Officer erred in allowing the dwelling to be located less than 25 ft. from the beach access right of way stating that the minimum setback requirements in the ordinance were not met under Zoning Article III, B. Minimum setbacks.
- 11) Town Planner Bruce Woodruff stated that the Moultonborough Town Zoning Ordinance was enacted for the first time in 1985, that a lot of record savings clause was added in 1992, that the Code Enforcement Officer customarily interpreted that clause to mean that a sub-standard lot of record building proposal had to meet the setback requirements of today's Ordinance, but not any other requirement that didn't affect safety, such as lot area and frontage. He stated the Code Enforcement Officer made sure this permit complied with the Court Order and that he ensured that the permit applicant had secured all other required permits such as septic approvals and shore land permit approvals.
- 12) Planner Woodruff stated that the Board could decide whether to add Atty. Meier's second appeal point to the application since it was being added at this hearing for the first time. However, Woodruff stated that the front setback requirement was for exactly that; a setback distance located at the front of a lot adjacent to the street that provided access via a viatic easement to the property. He further stated that this front setback requirement was never applied to a right of way easement internal to a lot and inherently part of said lot.
- 13) Planner Woodruff discussed the substantial vesting of the subdivision as a whole which also served to "save" the rights to develop the few remaining lots in the subdivision, citing NH RSA RSA 674:39 and 676:12, V and Case Law from *Navin v. Exeter*, 115 N.H. 248 (1975) and *Henry & Murphy v. Town of Allenstown*, 120 N.H. 910 (1980).
- 14) Based on the evidence presented, the Board took final action at the meeting of February 15, 2012.

The Public Hearing was continued to February 15, 2012. The Board of Adjustment closed the Public Hearing on February 15, 2012. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of four (4) in favor (Hopkins, Crowe, King, Bickford), none (0) opposed, to **UPHOLD** the issuance of the Building Permit by the Code Enforcement Officer on 12/19/2011 for Map 200, Lot 12 located on Kona Farm Road, and to deny their appeal.


Jerry D. Hopkins
Vice Chairman, Zoning Board of Adjustment

Date 15 FEB 2012