



Town of Moultonborough Zoning Board of Adjustment

Zoning Board of Adjustment Notice of Decision

Appeal of the Board of Selectman's January 19, 2024 Decision to Deny Donald J. Martin's Application Requesting Restoration of Involuntary Merged Lots

September 20, 2024

**Applicant: Donald J. Martin
1112 Moultonboro Neck Road
Moultonboro, NH 03254**

Location: 1112 Moultonboro Neck Road, Moultonborough, NH (Tax Map 245 Lot 60)

On March 20, 2024, the Zoning Board of Adjustment of the Town of Moultonborough held a public hearing on the application for Donald J. Martin (hereinafter referred to as the “Applicant” and/or “Owner”) for an appeal of the Board of Selectman's January 19, 2024 Decision to Deny Donald J. Martin's Application Requesting Restoration of Involuntarily Merged Lots pursuant to RSA 674:39-aa, currently Tax Map 245, Lot 60, located at 1112 Moultonboro Neck Road. The March 20, 2024 hearing was continued at the request of the Applicant to April 17, 2024 in order to provide notice to an abutter. The April 17, 2024 hearing was continued at the request of the Applicant to July 17, 2024 in order to provide a survey showing more information regarding the septic system. The July 17, 2024 hearing was continued at the request of the Applicant to September 18, 2024 to allow for the survey work to be completed.

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

- 1) The property is located at 1112 Moultonboro Neck Road, Moultonborough, NH (Tax Map 245, Lot 60)
- 2) Donald J. Martin is the owner of record for the lot.
- 3) Atty. Biron L. Bedard of Ransmeier & Spellman, P.C. presented the Appeal.
- 4) The lot is in the Residential/Agricultural Zone and the Groundwater Protection Overlay District.

- 5) One member of the public noted their concerns that the Town's procedure is not in line with State law.
- 6) A representative of Far Echo Harbor Club Association stated that the Association was not notified of the hearing, and that they had not had the ability to review the Appeal. Any decision made at the March 20, 2023 hearing could affect the Association.
- 7) On March 20, 2024, the Board continued the public hearing for Donald J. Martin – Appeal of the Board of Selectmen's January 19, 2024 decision to April 17, 2024.
- 8) The Town Planner identified three reasons for denial.
- 9) Attorney Beddard gave his position, identifying that the burden of proof lies upon the Town to dispute his Client's claim that the lots were involuntarily merged.
- 10) On April 17, 2024, the Board continued the public hearing for Donald J. Martin – Appeal of the Board of Selectmen's January 19, 2024 decision to July 17, 2024, to allow time for the Applicant to have a survey of the property completed, which would depict the location of the existing septic leaching field and septic lines.
- 11) The Public Hearing was re-opened at the July 17, 2024 ZBA meeting, and the Board acted on a request for continuance submitted by the Applicant's Attorney, Biron Bedard, dated July 12, 2024 to continue the public hearing for Donald J. Martin – Appeal of the Board of Selectmen's January 19, 2024 decision to September 18, 2024, to allow time for the survey to be conducted to determine the location of certain septic lines, tanks and leach fields.
- 12) The Public Hearing was re-opened at the September 18, 2024 ZBA meeting.
- 13) A plan prepared by Norway Plains Associates, Inc., titled Plan of Land, signed/dated 9/17/24 by Randolph R. Tetreault, was submitted at the hearing on September 18, 2024, as additional information.
- 14) Testimony by Attorney Beddard was given at the hearings.
- 15) Based on the testimony evidence and matters presented to and discussed by the Moultonborough Zoning Board of Adjustment during the continued hearing held on September 18, 2024 and at prior hearings by the ZBA of the Appeal of the Selectmen's January 18, 2024 Decision to Deny Donald J. Martin's Application Requesting Restoration of Involuntarily Merged Lots, a request for reconsideration of said decision having been denied by the Selectmen on February 15, 2024, the Board of Adjustment voted five (5) in favor (Mills, McDonough, DeMeo, Jakobsen, Stephens) and none (0) opposed to: (a) to affirm said denial by the Board of Selectmen; and (b) on a de novo basis deny the Appeal to the ZBA cited above based on the following findings, individually, collectively and cumulatively:
 - a. The parcel of land owned by Mr. Martin and referred to in said Appeal was conveyed by Leisuretime, Inc. to Ernest and Patricia Gray by deed recorded in the Carroll County

Registry of Deeds on April 4, 1961.

b. Said deed to the Grays conveyed the parcel as one lot with a single metes and bounds description and this single metes and bounds description has continued in the deeds to each subsequent owner, including Mr. Martin.

c. Said deed to the Grays included a statement after the legal description as follows: “Meaning and intending to convey parts of Lots 79 and 49 and all of Lot 59 as shown on the aforementioned plan”. The Plan referred to is recorded in Plan Book 6, Page 10, Carroll County Registry of Deeds. No plan showing the parcel owned by Mr. Martin and referred to in the Appeal as separate lots has been recorded in the Carroll County Registry of Deeds nor has such a plan been presented to the ZBA. The deed to the Grays was recorded prior to the adoption of subdivision regulations by the Town of Moultonborough and prior to the adoption of a zoning ordinance by the Town Of Moultonborough.

d. Prior to the Application filed by Mr. Martin with the Selectmen no owner in the chain of title objected to the taxation of the parcel owned by Mr. Martin as a single lot.

e. Mr. Martin has provided no evidence of action by the Town of Moultonborough constituting merger by municipal action for zoning, assessing or taxation purposes as described in NH RSA 674:39-aa 1 (a) and II.

f. The ZBA finds and determines that the Applicant has not established that the alleged lots described in the Application were “merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner”. Based on the above findings and determinations, the ZBA finds that Applicant has failed to state a case upon which relief can be granted under NH RSA 674:39-aa and therefore the ZBA hereby: (a) affirms said denial by the Board of Selectmen; and (b) on a de novo basis denies the Appeal to the ZBA cited above.

g. Assuming, for the sake of argument, but without deciding, that the Town of Moultonborough has involuntarily merged the alleged lots described in the Application and that therefore the Town of Moultonborough has the burden of proof as described in NH RSA 674:39-aa II (b), the ZBA, based on the findings set forth above, including, without limitation items a, b, c and d and the following findings, individually, collectively and cumulatively, hereby: (a) affirms said denial by the Board of Selectmen; and (b) on a de novo basis denies the Appeal to the ZBA cited above based upon merger by conduct of prior owners in the chain of title thereby merging the alleged lots 49, 59 and 79 into one lot:

(i) The Norway Plains Plan submitted to the Board and the Memorandum to the ZBA by the Town Planner on March 12, 2024, provides evidence that that a prior owner constructed a septic system consisting of a septic tank, leach filed and connection pipe(s) on part of alleged lot 49 and alleged lot 59 for the benefit of the dwelling located on alleged lot 79, with the septic tank being located on alleged Lot 79, the

leach field on alleged lot 49 and the pipe(s) connecting the tank to the leach field crossing all of alleged lots 49, 59 and 79. The use of the entire parcel to provide the septic tank, connecting pipe(s) and leach field to serve the one dwelling located on the parcel is indicative of an intent by prior owners to treat the parcel as one lot. The use of alleged lot 49 and alleged lot 59 for the benefit of the dwelling currently located on alleged Lot 79, is at least as significant as the placement of a garage on a lot line.

(ii) Independent of the above findings, septic design plans submitted by prior owners in the chain of title, namely Knapp (approved by the Town of Moultonborough on July 11, 1989 and by the State of New Hampshire on July 18, 1989) and Blauvelt (approved by the Town of Moultonborough on June 8, 1994 and by the State of New Hampshire on June 13 [year blank]) show the alleged lots described in the Appeal as one lot, with the Blauvelt plan showing loading calculations based on the square footage of the entire lot. Neither the Knapp nor the Blauvelt plans show any interior lot lines. The lack of internal lot lines, the use of the entire parcel to provide the septic tank, connecting pipe(s) and leach field to serve the one dwelling located on the parcel and the use of the entire square footage of the parcel to compute loading calculations are indicative of an intent by prior owners to treat the parcel as one lot.

(iii) The ZBA finds and determines that the alleged lots described in the Application were voluntarily merged by reason of an overt action or conduct indicating that any prior owner regarded said lots as merged, such as, but not limited to, abandoning a lot line. Therefore, the ZBA finds and determines with respect to the land described in the Application that an owner in the chain of title voluntarily merged his or her lots and that all subsequent owners are estopped from requesting restoration. Based on the above findings and determinations, the ZBA finds that Applicant has failed to state a case upon which relief can be granted under NH RSA 674:39-aa and therefore the ZBA hereby: (a) affirms said denial by the Board of Selectmen; and (b) on a de novo basis denies the Appeal to the ZBA cited above.



Robert H. Stephens
Chairman

cc. Biron L. Bedard, Esq. (by email only at bbedard@ranspell.com)
Map Lot Document File