

**TOWN OF SEABROOK
BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 24, 2010 MEETING**

Members Present: Teresa Rowe, Robin Fales, Henry Therriault, Dr. Robert Lebold, Mike Lowry and Lucille Moulton

Others Present: Jo-Anne Page, Secretary

H. Therriault opened the meeting at 7:20 PM and explained the procedure to all in attendance.

OLD BUSINESS:

Minutes of October 27, 2010 Meeting

Motion: Dr. Lebold Accept Minutes October 27, 2010 Meeting as presented.

Second: L. Moulton

Yes: Dr. Lebold, L. Moulton, H. Therriault and T. Rowe

Abstain: R. Fales and M. Lowry

Minutes of October 27, 2010 meeting accepted as presented.

Case #2010-19 Kenneth Clark, 460 New Zealand Road, Map 1, Lot 12, for Variance to Article VI, Table 2, Paragraph Frontage/Width to Permit Subdivision of Lot in Zone 1 Rural (CONTINUED FROM OCTOBER 27, 2010 MEETING)

Attorney Stephen Ells and Henry Boyd from Millennium Engineering appeared on behalf of this application.

Attorney Ells stated that he would like to challenge L. Moulton sitting on the board.

L. Moulton stated that she did not know the applicant and has not talked to him.

Attorney Ells stated that while L. Moulton was not a direct abutter, her property was located within fifty feet of the applicant's property which would disqualify her. He stated that the applicant was told by another abutter that L. Moulton would vote against the project. He said that because of being almost a direct abutter and prejudice in the matter he would ask that she be excused from the board.

R. Fales stated that she also lived near the property on this application.

L. Moulton stated that she had the right to her opinion and that she does not know the application. She pointed out that she was against the driveway being put right on the property line.

Attorney Ells stated that L. Moulton was already against this proposal.

L. Moulton said she did not talk to the neighbors or Mr. Clark. She also pointed that she would not be voting on this application tonight because she was an alternate and there was a full board.

R. Fales stated again that she lived down the street from this applicant.

Attorney Ells asked if she felt she should step down.

R. Fales stated that she did not discuss the matter with anyone and could hear the case.

H. Therriault stated that he appreciated the early notice on this matter. He said that although L. Moulton was not an abutter it would not be appropriate for her to vote on this matter. He said that if this were ever to go to court, it could be a problem.

L. Moulton stated that she never told any of the abutters to write letters. She said she told them she was against the project having the driveway right on the property line. Dr. Lebold said that you cannot prejudge a case.

L. Moulton stated that her only complaint was that the project is too close to the property line. She would like the applicant to redo the plan.

Attorney Ells apologized for the uproar about this matter. He said he was not planning on appeals and was just looking for a fair hearing for his applicant.

L. Moulton stated that the plowing would all be going on the neighbor's yard with this proposal.

Attorney Ells stated that this property was approximately 60,000 square feet in size. He said that the proposal was to divide the road frontage and create a second legal sized lot. He advised that this lot would be for a second home would not have the required road frontage. He then covered the criteria for a variance. He covered each criteria that he felt the applicant met in order to be granted the road frontage variance. He stated that a variance is to give property owners reasonable use of their property. He pointed out that unnecessary hardship is also something to be considered in granting of a variance.

Attorney Ells stated the following in support of this application:

- Distinguishing factor is that this property is over three times the required size in this zone
- A duplex could go on this lot
- Purpose of frontage is to allow reasonable and safe access to homes
- Line of site for both lots should not be a problem
- The proposal is for residential use in a residential area
- Simplex test: Need zoning regulation to allow reasonable use of the property and not hurt surrounding property
- He covered the five criteria for granting the variance
- The request was for 125 feet road frontage for the existing house and 25 feet road frontage for the lot they wanted to create
- He spoke to the letter from Raymond Peabody submitted at the October 27, 2010 meeting with concerns of melting and wetlands

H. Boyd stated that the proposal meets the criteria of being 25 feet away from the wetlands. He showed the proposed plan he had drawn for illustrated purposes only. He said that he was hoping the proposed house would be at least 30 feet from the wetlands. He pointed out that the upland area was larger than the 6,000 square feet required.

T. Rowe questioned the semi-circle driveway. She stated that the Town Ordinance allows one 20 foot wide driveway on a town road. She also asked about the new driveway for the proposed lot.

H. Boyd stated that this might be two 10 foot wide driveways but that would be looked into. He said the proposed lot would have access through the 25 foot wide piece of property.

Attorney Ells stated that they would try to keep the driveway as far away from the property line as possible in order not to cause water problems on the abutting property.

H. Boyd stated that the property slopes back and lower and believes that the water will run towards the back anyway.

L. Moulton asked why a 25 foot driveway was being proposed when the town only allowed a 20 foot wide driveway. She also asked why not just get a deeded right of way instead of a variance. She said that this lot had 150 feet of road frontage and they could do this with a deed right of way.

Attorney Ells pointed out that they were trying to get a second lot. He said that the difference is access versus frontage. He stated that the driveway would not be 25 feet wide; this area would just give the back lot road frontage.

Dr. Lebold asked if there was still a mortgage on this property.

Attorney Ells stated that there was and this would have to be straightened out with the bank if any of it were ever sold. He said a variance on this lot would not affect the bank lien. If this was sold it there would be a title search and it would be dealt with.

K. Clark, property owner, stated at this point he intended on the property remaining in the family.

H. Boyd said that they would have to go to the bank for a release if it were to be sold. He also pointed out that most of the properties that go before the board of adjustment have bank liens on them.

Dr. Lebold asked if there could be a duplex on this lot.

H. Boyd said there could be a duplex on the 60,000 square foot lot without splitting it. He said that the property owner is trying to improve his property and that there is a huge elevation difference from the front to the back of the property. He pointed out that the new house would be way off the street and not visible from the street.

James (no last name given), 455 New Zealand Road, stated the following:

- Someone was lying about who they spoke with
- Wanted to know about the driveway issue
- There could now be three driveways at this location
- He was opposed to it being on the property line
- Wanted to know where the snow would go
- Snow issues would be a problem for him as it already creates a mess for him
- He had wetlands concerns
- The lot is large with wetlands
- He does not understand the hardship
- He is just opposed to this
- His mail box often has debris around it from snow removal on that property because all the mail boxes are in front of his house because of the postal service

H. Therriault stated that the driveway might be grandfathered. He also pointed out that any new driveway would not be 25 feet wide. He said that the 25 foot issue is for road frontage only.

Dr. Lebold asked how many living units were there now.

K. Clark stated that there is one house and a mobile trailer for cargo.

H. Boyd said the driveway would be a maximum of 14 feet wide. He stated that the drainage would be worked on. He also pointed out that although there are wetlands, there is still a huge area that can be built on. He showed that if they had gone for more frontage for the second lot then more variances would have been needed.

K. Clark said that the intention with this project was to put a single family home on the second lot.

Attorney Ells said that they would accept a condition only a single family home being allowed on this lot if the variance was to be granted.

Dr. Lebold asked about the possibility of an 11 foot buffer on the side of the property closest to the abutter. He suggested eliminating the small driveway that is closest to the new property line.

H. Boyd stated that this could be done. He also suggested a driveway maintenance agreement.

Attorney Ells said that they would work to get the driveway as far away from the abutter's property and closer to the applicant's new property line. He also stated that if the driveway was not grandfathered they would work on bringing it into compliance.

H. Therriault asked if they were going to build a garage.

H. Boyd said it could be done later if the property owner wanted to. He again pointed out the difficult elevations on the property.

H. Therriault asked Attorney Ells to cover the criteria they met for the application to be granted. Attorney Ells covered the five criteria that were submitted with the application.

H. Therriault stated that the small road frontage issue was a little tough for him.

H. Therriault stated that if there were no more questions or comments on this application it was time to take a vote.

	T. Rowe	R. Fales	H. Therriault	Dr. Lebold	M. Lowry
1	Yes	Yes	Yes	Yes	No
2	Yes	Yes	Yes	Yes	No
3	Yes	Yes	Yes	Yes	No
4	Yes	Yes	Yes	Yes	Yes
5	Yes	Yes	Yes	Yes	No

Motion: Dr. Lebold Grant the request for variance noting the hardship on the property
 Second: T. Rowe given the topography with the following conditions:
 1) 11 Foot buffer lot line and proposed driveway and angle driveway for water/snow to drain westerly;
 2) One single family home only on each lot; and
 3) Elimination of the existing east curb cut (next to proposed driveway)

Yes: Dr. Lebold, T. Rowe, R. Fales and H. Therriault
 No: M. Lowry

Request for Variance at 460 New Zealand Road is granted.

Motion: M. Lowry Adjourn
 Second: T. Rowe
 Yes: Unanimous

Meeting adjourned at 8:30PM.

Henry Therriault, Chairman

Date