



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance Michael G. Wallace /Map 99, Lot 181

January 22, 2015

Applicant: Michael G. Wallace
49 Judson Street
Malden, MA 02145

Location: 65 Sunrise Drive, Moultonborough, NH (Tax Map 99, Lot 181)

On January 21, 2015, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Michael G. Wallace (hereinafter referred to as the "Applicant" and/or "Owner") to obtain Variances from MZO Article VII. (E) (1) and Article III. B (3 & 4) in order to replace a deck and expand its size and location into the setbacks 11 ft. from the side boundary line where a minimum of 20 ft. is required and 30 ft. from the water where the existing deck had been approximately 33 ft. on the parcel located in the Residential Agricultural (RA) Zoning District.

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

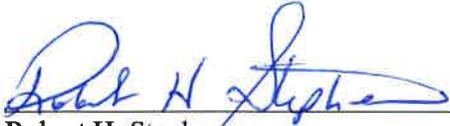
- 1) The property is located at 65 Sunrise Drive (Tax Map 99, Lot 181).
- 2) The applicant is the owner of record for the lot.
- 3) On January 7, 2015 the Public Hearing was continued to January 21, 2015 as the applicant exercised his right for a continuance for a full board of five.
- 4) Michael Wallace presented the application for the variance(s).
- 5) The lot is located in the Residential Agricultural (RA) Zoning District.
- 6) The applicant is proposing the replacement and expansion of a removed non-conforming deck located approximately 11' from the sideline setback and 30 ft. from the lake shorefront. The applicant stated the request for the 3 foot addition into the side setback was for safe access and egress.
- 7) The setbacks affected are the twenty foot (20') side line setback and the fifty foot (50') lake setback.

- 8) The applicant had not obtained a Building Permit prior to the removal of the non-conforming deck.
- 9) The applicant has not received a NH DES Shore land Impact Permit.
- 10) It is noted for the record that this application for variance relief is a result of an enforcement action by the Code Enforcement Officer as the original deck was removed, a new structure was framed and the owner had not secured a building permit. Also noted is the fact that since this was the case, an equitable waiver of dimensional requirements was not an option for the owner because he did not meet the criterion of "inquiring" by his failure to apply for a building permit.
- 11) The application was modified at the public hearing with the acquiescence of the applicant, eliminating the 3 foot intrusion into the side setback, noting that a 3 ft. x 3ft. landing, with stairs towards the road, would be allowed for access and egress.
- 12) At the meeting on January 21, 2015, no members of the public spoke in favor of or against the application.
- 13) Granting the Variance would not be contrary to the public interest as the Board felt that the additional encroachment into the waterfront setback did not alter the character of the neighborhood nor threaten the welfare, safety or health of the public because other neighborhood structures were similarly constructed and located at a similar distance to the water, and especially if best management storm water treatment is included with the construction.
- 14) Granting the Variance would be consistent with the spirit of the Ordinance as the Board felt that the encroachment into the waterfront setback did not alter the character of the neighborhood nor threaten the welfare, safety or health of the public because other neighborhood structures were similarly constructed and located at a similar distance to the water.
- 15) By granting the Variance, substantial justice would be done because there had been a smaller deck there and that other structures in the neighborhood were located closer to the water front (canal) than what the applicant was proposing.
- 16) Granting the Variance would not diminish the value of surrounding properties as the new construction would not only be in keeping with other neighborhood deck construction, but would also be new construction and therefore of a higher value.
- 17) There is an unnecessary hardship in this case because the proposed expanded deck would be no closer to the water than other structures in the neighborhood, that the applicant is not asking for something that other neighbors do not have and therefore there is not a fair and substantial relationship between the general public purpose of the ordinance and this specific application of the setback provision to the subject property, especially given the storm water runoff mitigation treatment conditional to the approval.
- 18) On January 21, 2015, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Bickford, Nolin, Crowe, DeMeo) and none (0) opposed to grant a modified request for a variance with the following conditions; 1. That a Shore Land Permit be obtained by NH DES; 2. Storm water runoff mitigation be installed under the entire deck, consisting of $\frac{3}{4}$ inch stone, 3-4 inches in depth; 3. Prohibit any future enclosure of space above or below the deck area; (the modification agreed to by the Board and Applicant was to eliminate requesting the side setback variance and therefore not asking to construct the three foot wide deck on the side of the dwelling.) ...and to close the Public Hearing. The

Board moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting.

The Board of Adjustment, on March 18, 2015, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of four (4) in favor (Stephens, Nolin, Bickford, DeMeo), none (0) opposed and one (1) abstention (St. Peter).

The decision made to grant the variance on January 21, 2015, shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date 3-21-15