



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Equitable Waiver of Dimensional Requirements Trey and Anthony Wilson/Tax Map 23, Lot 15

April 20, 2011

**Applicant: Trey and Anthony Wilson
1225 Whittier Highway
Moultonborough, NH 03254**

Location: 1225 Whittier Highway (Tax Map 23, Lot 15)

On April 6, 2011 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Trey and Anthony Wilson (hereinafter referred to as the “Applicant” and/or “Owner”) for an application for an Equitable Waiver of Dimensional Requirements from Article VI (F)(2) for the existing garage located within the rear setback for the property located in the Commercial B Zoning District.

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

- 1) The property is located at 1225 Whittier Highway (Tax Map 23, Lot 15)
- 2) The applicants are the owners of record for the lot.
- 3) The applicants were represented by Jim Hambrook of Hambrook Land Surveying
- 4) The applicants waived their right to a Board of five (5) members, there being only four (4) members present and able to hear the application at the April 6, 2011 meeting.
- 5) The lot is located in the Commercial B Zoning District.
- 6) The existing site contains a commercial garage and office. A new dwelling unit is proposed to be located on the site as well.
- 7) The applicant is concurrently seeking Site Plan Review and a Special Exception from the Planning Board and the ZBA, respectively.
- 8) The existing structure, a commercial garage, was permitted as a residential hanger on the site in 2006.
- 9) The structure was surveyed by Jim Hambrook in 2011 for the residential dwelling unit Site Plan Review, and was found to be within the required twenty-five (25) foot rear setback.

- 10) The existing garage structure is located approx. seventeen (17) feet from the rear property line on one corner, and approx. twenty-two (22) feet from the property line on the other corner nearest the rear property line.
- 11) The original footings of a previous metal structure that had collapsed were used to site the existing garage and were incorporated into the construction of the existing structure.
- 12) There were no members of the public wishing to speak on this application.
- 13) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed.
- 14) The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.
- 15) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.
- 16) Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.
- 17) The Zoning Board of Adjustment voted by a vote of four (4) in favor (Stephens, Hopkins, Nolin, Zewski), and none (0) opposed to continue the Public Hearing to April 20, 2011, and to direct the Town Planner to draft a Notice of Decision to Grant the Equitable Waiver, to be reviewed by the Board at the April 20, 2011 Regular Meeting.

The Board of Adjustment continued the Public Hearing to April 20, 2011. The Board of Adjustment closed the public portion of the hearing on April 20, 2011. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of five (5) in favor (Stephens, Hopkins, Heal, Nolin, McCarthy), none (0) opposed, to **GRANT** the request for Special Exception.

This decision 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 Stephens
 Chairman, Zoning Board of Adjustment

Date _____