



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance

James Morris & Deborah dePeyster/Map 61, Lot 2

June 20, 2013

**Applicant: James Morris & Deborah dePeyster
166 School Street
Concord, NH 03301**

Location: 518 High Haith Road, Moultonborough, NH (Tax Map 61, Lot 2)

On June 19, 2013, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of James Morris & Deborah dePeyster (hereinafter referred to as the "Applicant" and/or "Owner") for a variance from Article VII (D) (1) and E, to allow for the expansion of an existing non-conforming dwelling within the existing building envelope on the parcel located in the Agricultural Residential (AR) Zoning District in an amount greater than the 20% maximum allowed.

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

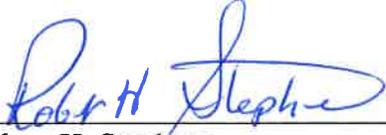
- 1) The property is located at 518 High Haith Road (Tax Map 61, Lot 2).
- 2) Hale Realty Trust is owner of record for the lot.
- 3) James Morris presented the application for the variance.
- 4) The lot is located in the Agricultural Residential (AR) Zoning District.
- 5) The side setback for the parcel is twenty (20) feet from the property line.
- 6) The existing dwelling is located within the twenty (20) foot side setback and has a square footage of approximately 546 square feet.
- 7) The Zoning Ordinance limits the expansion to 20% of the gross habitable floor space or approximately 140 square feet.

- 8) The proposed expansion will be located entirely within the legal building envelope and will not exceed a total of 600 square feet.
- 9) Member Nolin requested the foundation be set by a survey.
- 10) One letter of opposition was noted for the record.
- 11) No members of the public wished to speak during the public hearing.
- 12) Granting the Variance would not be contrary to the public interest as the addition would not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.
- 13) Granting the Variance would be consistent with the spirit of the Ordinance because the variance request does not unduly, and in any marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives, which in this case is to allow residential dwellings and expansions that meet dimensional requirements in the Residential/agricultural district.
- 14) By granting the Variance, substantial justice would be done because there would be no gain to the public benefit at all from a denial of the expansion in this case, but the loss to the homeowner is great.
- 15) Granting the Variance would not diminish the value of surrounding properties as the expansion would be in line with the use and type of building in the neighborhood and not be different in character.
- 16) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the lot size and location were pre-existing to zoning and the zoning change that was enacted in April 2013 has a documented different purpose than preventing homeowners from expanding their dwelling in an otherwise legal way in a residential neighborhood. Therefore, the Board felt that the application of the ordinance in this case constituted the hardship.
- 17) On June 19, 2013, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Zewski, Bickford, Crowe) and none (0) opposed to grant the request for a variance with the following condition;
 1. A foundation certificate survey shall be submitted at the time of application for building permit to the Office of Development Services.

...and to close the Public Hearing. They 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 July 17, 2013, 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 five (5) in favor (Stephens, Nolin, Zewski, Bickford, Crowe), none (0) opposed.

The decision made to Approve the variance on June 19, 2013 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 7-19-2013