



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision - DENIAL **Request for Variance** **Russell H. Brown /Map 198, Lot 8**

July 30, 2014

Applicant: Russell H. Brown
4 Kimberly Court
Chelmsford, MA 01824

Location: 49 Grassy Pond Road, Moultonborough, NH (Tax Map 198, Lot 8)

On July 16, 2014, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Russell H. Brown (hereinafter referred to as the "Applicant" and/or "Owner") for a variance from Article III. B (3) which removes a once existing 7' x 20' nonconforming accessory structure located approximately 7' from the property line, and to construct a new 12' x 26' garage located approximately 11.5' from the lot line, where the side setback of 20' is required 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 49 Grassy Pond Road (Tax Map 198, Lot 8).
- 2) The applicant is the owner of record for the lot.
- 3) Russ Brown presented the application for the variance.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District.
- 5) The applicant is proposing to construct a 12' x 26' garage located approximately 11.5' from the sideline setback.
- 6) The setback affected is the twenty foot (20') side line setback.

- 7) The applicant had received a Building Permit, #6583, to add a full basement and for the construction of an 80 sq. ft. addition to the principal dwelling structure on the property.
- 8) The applicant had received a NH DES Shore land Impact Permit, #2012-01142, to impact 800 sq. ft. in order to excavate from, and pour a concrete foundation for the existing dwelling and add an 8' x 10' addition.
- 9) It was noted for the record that this application for variance relief is a result of an enforcement action by the Code Enforcement Officer as the structure was substantially built and the owner had not secured a building permit. Also noted was 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.
- 10) The applicant stated that he had believed that the building permit and shore land permit obtained had also been for the new garage structure. It was noted by the Town Planner that this was not the case.
- 11) At the meeting on July 16, 2014, no members of the public spoke in favor of or against the application.
- 12) Granting the Variance would not be contrary to the public interest as the Board felt that the encroachment into the side setback did not alter the character of the neighborhood nor threaten the welfare, safety or health of the public because of the existing grade differential and block retaining wall and fencing along the common property boundary.
- 13) Granting the Variance would be consistent with the spirit of the Ordinance as the Board felt that the encroachment into the side setback did not alter the character of the neighborhood nor threaten the welfare, safety or health of the public because of the existing grade differential and block retaining wall and fencing along the common property boundary.
- 14) By granting the Variance, substantial justice would not be done because there are locations on the property where a new garage structure could conform to the building envelope and be reasonable with regard to siting, usability and aesthetics.
- 15) Granting the Variance would not diminish the value of surrounding properties as other neighborhood properties have similar sized and aged structures and the proposal would be new construction.
- 16) No Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship because many of the neighborhood lots are shaped like trapezoids, with narrowing building envelopes. In addition, the request is unreasonable because there are locations on the property where a new 12 ft. x 26 ft. garage structure could conform to the building envelope and be reasonable with regard to siting, usability and aesthetics.

17) On July 16, 2014, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Zewski, Crowe, Hopkins) and none (0) opposed to deny the request for a variance,

...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 August 6, 2014, 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, Crowe, Jenny, Hopkins), none (0) opposed.

The decision made to deny the variance on July 16, 2014 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 8/7/2014