



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Equitable Waiver of Dimensional Requirements Antonia Carollo Revocable Trust; Antonia & Anthony J. Carollo Trustees Tax Map 120, Lot 107

October 8, 2015

Applicant: Antonia Carollo Revocable Trust
Antonia & Anthony J. Carollo Trustees
PO Box 921
Moultonborough, NH 03254

Location: 21 Myrtle Drive (Tax Map 120, Lot 107)

On October 7, 2015 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Steve Carollo (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a variance from Moultonborough Zoning Ordinance Article III (B)(3) for the existing foundation located within the side setback for the property located in the Residential/Agricultural 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 Chair stated the application submitted by the applicant for the granting of a variance was not the correct application, noting that this should be a request for an Equitable Waiver of Dimensional Requirements.
- 2) Steve Carollo requested to amend his request from an application for variance to an application for an Equitable Waiver of Dimensional Requirements.
- 3) The property is located at 21 Myrtle Drive (Tax Map 120, Lot 107)
- 4) The applicant, Steven Carollo, has Durable General Power of Attorney for Anthony J. Carollo.
- 5) Steve Carollo, Anthony Carollo and Antonia Carollo were present for the public hearing.
- 6) Steve Carollo presented the application for an Equitable Wavier of Dimensional Requirements.
- 7) The lot is located in the Residential/Agricultural Zoning District.
- 8) The existing site contains a 28' x 30' foundation which was poured in 1986. A new dwelling unit is proposed to be constructed on the existing foundation.

- 9) The applicant applied for a building permit for a single family home to be constructed on the existing foundation.
- 10) The Code Enforcement Officer required that an engineer approve the structural integrity of the foundation as well as a certification of the location of the existing foundation.
- 11) The foundation was surveyed by JPS & Associates and was found to be within the required twenty (20) foot side setback.
- 12) The existing 28' x 30' foundation is located approx. sixteen feet, six inches (16' 6") from the side property line.
- 13) There were no members of the public wishing to speak on this application.
- 14) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, for nearly twenty-nine (29) years.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) On October 7, 2015, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Zewski, Bickford, St. Peter), and none (0) opposed to grant the request for the Equitable Waiver of Dimensional Requirements for the construction of a dwelling on the existing foundation located 16'6" from the side property line, and further to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at their next meeting.

The Board of Adjustment, on December 16, 2015, approved this formal Notice of Decision language and authorized the Vice 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, Bickford, St. Peter, DeMeo), and none (0) opposed

The decision made to grant the equitable waiver on October 7, 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 Stephens
Chairman, Zoning Board of Adjustment

Date 12-17-15