



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance – Side Setback
Madeline S. Oka and Paul Oka
Tax Map 168, Lot 2

March 15, 2023

Applicant: **Madeline S. Oka and Paul Oka**
63 Blackey Cove Road
Moultonborough, NH 03254

Location: **63 Blackey Cove Road, Moultonborough, NH (Tax Map 168, Lot 2)**

On February 15, 2023, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Madeline S. Oka and Paul Oka (hereinafter referred to as the "Applicant" and/or "Owner"). The Applicant requested a Variance from MZO Section 3.2.2.1 and Section 3.2.2.3.

At the request of the Applicant's agent, the public hearing was continued to March 15, 2023. At the regularly scheduled Zoning Board meeting on March 15, 2023, the Board voted by a vote of four (4) in favor (St. Peter, DeMeo, Poloian, Stephens), and one (1) opposed (Mills), to **grant** the variance for Tax Map 168, Lot 2 at 63 Blackey Cove Road from Section 3.2.2.3 to allow for the construction of an attached Boat Shed to be located no closer than 15.5 ft. from the southerly side boundary line, where 20 ft. is required on the parcel located in the Residential Agricultural (RA) Zoning District.

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

- 1) The property is located at 63 Blackey Cove Road (Tax Map 168, Lot 2).
- 2) Madeline S. Oka is the owner of record for the lot.
- 3) The Applicants were represented by Attorney Christopher Boldt of Donahue, Tucker & Ciandella, PLLC.

- 4) The lot is located in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in that district.
- 5) Prior to public input, the Zoning Board voted five (5) in favor (Mills, DeMeo, Poloian, St. Peter, Stephens) that the proposal did not have the potential for Regional Impact.
- 6) The proposal is for the removal of an existing legally nonconforming structure with one bedroom dwelling and replace with a garage with a rec room with a wet bar, full bathroom, and storage loft, and a new addition for a boat shed on the northeastern side of the existing garage cottage. The addition would be placed no closer than 22.5 feet from the centerline of Blackey Cove Road where 50 feet is required and no closer than 14.5 feet from the southern side boundary line where 20 feet is required.
- 7) The Applicant has obtained a Shoreland Impact Permit (2022-02870) from the NH Department of Environmental Services (DES).
- 8) No member of the public spoke to the request for the variance.
- 9) Granting the Variance will not be contrary to the public interest as the Addition would be in keeping with the size of the Property and the existing development in the immediate area along this portion of the Lake, the Project as a whole has already received the necessary DES Shoreland Permit, and the Project as a whole will comply with the Town's Comprehensive Shoreland Protection provisions of Article 4.7, reflection that the proposal does not threaten public health, safety or welfare.
- 10) Granting the Variance is consistent with the spirit of the Ordinance for the same reasons as listed above.
- 11) By granting the Variance, substantial justice is done as there would be a clear loss to the Applicant that is not outweighed by any gain to the community if the variance were denied. The variance will allow the Applicant to construct the Addition.
- 12) Granting the Variance does not diminish the value of surrounding properties as the Addition will not change the character of the neighborhood, will be new construction, adding value to the Applicant's Property and the value of the surrounding properties in keeping with the lake-side residential character of the neighborhood.
- 13) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the size, rectangular shape and location of the Property. The Property has the existing Garage near the wetlands associated with the Road on both the Property and the Abutting Lot withing the Road Setback and the Project has obtained the Shoreland Permit for DES for the Addition.

On March 15, 2023, the Zoning Board of Adjustment decided by a vote of four (4) in favor (St. Peter, Poloian, DeMeo, Stephens) and one (1) opposed (Mills) to grant the request for the Variance from Section 3.2.2.1 Madeline S. Oka and Paul Oka, Tax Map 168, Lot 2 to allow for the

construction of an Addition (Boat Shed) to be located no closer than 15.5 ft. from the southerly side boundary line at its closest point where 20 ft. is required, subject to the following conditions:

1. The existing structure shall be located in relationship to the road and lot line setbacks and by a NH licensed surveyor prior to demolition and be submitted with the application for a demolition.
2. Limits of encroachment into the lot line setbacks shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction.
3. Project shall obtain necessary state and local permits, to include approval of a town building permit, and all conditions of such permits shall be perpetually complied with.
4. The applicant shall obtain the necessary DES approval for temporary impact to the wetlands.
5. Any future changes to the structure or its use shall be subject to required approvals.
6. An approved building permit must be obtained prior to commencing construction and all necessary inspections shall be successfully completed prior to use.
7. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
8. The applicant and owner are solely responsible to comply with conditions of approval.
9. Per RSA 674:33, approval expires on 3/14/2025 if use is not substantially acted on.

Further, the Board voted 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 April 5, 2023, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision, send to the applicant and place same in the case file by a vote of four (4) in favor (St. Peter, DeMeo, Poloian, Stephens), none (0) opposed, and one (1) abstention (McDonough).

The decision made to grant the variance on March 15, 2023, 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

cc. Scott Dvorak – Building Inspector (by email only at sdvorak@moultonboroughnh.gov)
Christopher Boldt, Esq. (by email only at cboldt@dtclawyers.com)
Map Lot Document File