



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Article 9.1.4

Mark Koss and Jacqueline Koss

Tax Map 140, Lot 16 and Tax Map 170, Lot 12

April 6, 2022

Applicant: Mark and Jacqueline Koss
172 Carli Blvd.
Colchester, CT 06415

Location: Bean Road (Tax Map 140, Lot 16 and Tax Map 170, Lot 12)

On February 16, 2022, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Mark Koss and Jacqueline Koss (hereinafter referred to as the “Applicant” and/or “Owner”). The Applicant requested two variances from Article 9.1.4.

The public hearing was continued to March 16, 2022, and April 6, 2022. At the regularly scheduled Zoning Board meeting on April 6, 2022, the Board voted by a vote of five (5) in favor (St. Peter, DeMeo, Poloian, Mills, Stephens), none (0) opposed, to **approve** the two variances for Tax Map 140 Lot 16 and Tax Map 170, Lot 12 on Bean Road from the zoning requirement that an undisturbed, naturally vegetated buffer shall be maintained within the 25 feet immediately adjacent to the applicable wetlands on a parcel located in the Residential/Agricultural Zoning District, within the West Village Overlay District (WVOD) and the Groundwater Protection Overlay 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 on Bean Road (Tax Map 140 Lot 16 and Tax Map 170, Lot 12).
- 2) The Applicants are the owners of record for the two lots.
- 3) The lots are in the Residential/Agricultural Zoning District, within the West Village Overlay District (WVOD) and the Groundwater Protection Overlay District.
- 4) The Applicants were represented by Attorney Ethan Wood, Normandin, Cheney & O’Neil.
- 5) The Applicants are requesting relief for two areas of encroachment into an undisturbed, naturally vegetated buffer which shall be maintained within the 25 feet immediately adjacent to the applicable wetlands, one on Tax Map 170, Lot 12, and a second on Tax Map 140 Lot 16.
- 6) The proposed construction will require an approved NH DES Wetlands Impact Permit.

- 7) The Board determined that the proposal did not represent a potential regional impact.
- 8) Several members of the public spoke in opposition of the project.
- 9) Three letters from the public were submitted, one in favor of the project, and two in opposition.
- 10) The Board addressed each request for variance separately, addressing the request for relief from Article 9.1.4 for the “front” crossing (the one providing access from the public highway) in order to construct 30 of the proposed units first.
- 11) Granting the Variance would not be contrary to the public interest as the encroachment into the roadway did not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public as there has been a substantial amount of engineering completed to mitigate that concern.
- 12) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #11 above.
- 13) By granting the Variance, substantial justice would be done because there would be no gain to the public as the variance would allow the Applicant access into the property and there are provisions in place to mitigate any concerns that would normally be covered by the natural buffer and denying it would be a substantial injustice.
- 14) Granting the Variance would not diminish the value of surrounding properties as access to the property in of itself does not diminish property values. There are improvements that have been engineered to contain and filter the runoff prior to being released into the wetlands.
- 15) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the property cannot be accessed without the need to reduce the wetland buffer setback to access the property enable a reasonable use of the property.
- 16) On April 6, 2022, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, DeMeo, St. Peter, Poloian, Mills) and none (0) opposed to grant the request for the variance for Mark Koss and Jacqueline Koss, Tax Map 170, Lot 12 and Tax Map 140, Lot 16 for the “front” crossing providing access from the public highway subject to the following conditions: 1) All required federal, state, and local approvals shall be obtained prior to commencement of development activity. 2) All representations made by the applicant and applicant’s agent shall be incorporated as a condition of approval. 3) The applicant and owner are solely responsible to comply with conditions of approval. 4) Per RSA 673:33, approval expires on 4/6/2024 if use is not substantially acted on, 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 the next meeting.
- 17) The Board addressed the request for relief from Article 9.1.4 for the “rear” crossing (which will allow for the additional 30 proposed units) second.
- 18) Granting the Variance would not be contrary to the public interest as the encroachment into the buffer has been mitigated with engineering and contingent upon that design will require DES approval.
- 19) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #18 above.

- 20) By granting the Variance, substantial justice would be done because there would be no gain to the public as the variance would allow the Applicant to impact the buffer and there has been substantial engineering done with provisions in place to mitigate any concerns that would normally be covered by the natural buffer and denying it would be a substantial injustice.
- 21) Granting the Variance would not diminish the value of surrounding properties because when the engineering is done, it will provide safeguards on the impact at the area of crossing.
- 22) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as that section of the property cannot be accessed without relief through a variance to enable a reasonable use of the property.
- 23) On April 6, 2022, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, DeMeo, St. Peter, Poloian, Mills) and none (0) opposed to grant the request for the variance for Mark Koss and Jacqueline Koss, Tax Map 170, Lot 12 and Tax Map 140, Lot 16 for the "rear" crossing providing access allowing for the additional 30 units, subject to the following conditions: 1) All required federal, state, and local approvals shall be obtained prior to commencement of development activity. 2) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval. 3) The applicant and owner are solely responsible to comply with conditions of approval. 4) Per RSA 673:33, approval expires on 4/6/2024 if use is not substantially acted on. 5) If State wetlands approvals necessitate the relocation of the crossing and such relocation results in increased or significantly different impacts to the wetlands non disturbance buffer, reapplication to the ZBA shall be necessary, 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 the next meeting.

The Board of Adjustment, on May 4, 2022, 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, St. Peter, DeMeo, Poloian, Mills) and no abstentions.

The decision made to grant the two variances on April 6, 2022, 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 (by email only at sdvorak@moultonboroughnh.gov)
Ethan G. Wood, Esq.
Map Lot Document File