



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Section 3.2.4

**Daniel & Helene B. Demmer, Trustees
of the Windermere Legacy Realty Trust
Tax Map 291, Lot 22**

April 7, 2021

Applicant: **Daniel & Helene B. Demmer, Trustees
of the Windermere Legacy Realty Trust
167 Marlborough Street, Unit 1
Boston, MA 02116**

Location: **205 Windermere Road (Tax Map 291, Lot 22)**

On April 7, 2021 the Zoning Board of Adjustment of the Town of Moultonborough held a remote public hearing on the application of Daniel & Helene B. Demmer, Trustees of the Windermere Legacy Realty Trust (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a Variance from Moultonborough Zoning Ordinance Section 3.2.4 for the construction of a dwelling to be located 32.5 ft. at its closest point to the Lake, within the required 50-ft lake setback on a parcel 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 property is located at 205 Windermere Road (Tax Map 291, Lot 22).
- 2) The Applicants are the owners of record for the lot.
- 3) The lot is in the Residential Agricultural (RA) Zoning District.
- 4) The Applicant was represented by Attorney Christopher Boldt of Donahue, Tucker & Ciandella, PLLC.
- 5) The existing house foundation is located 24.5-ft at its closest point to the Lake, is at least 50% within the 50-ft setback from the Lake with a total of 2320 sq. ft. of impervious coverage within the 50-ft Lake setback zone.

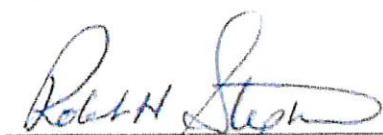
- 6) The existing deck is almost wholly within the 50-ft Lake setback and is located approximately 21-ft from the Lake at its closest point.
- 7) The Proposed House and Garage will be serviced by a new septic system, to be approved by NH DES.
- 8) The applicants are proposing to remove the existing 4-bedroom single story house with a non-conforming waterfront deck and non-conforming detached garage and rebuild a new 7-bedroom residence with the foundation being located 32.5-ft at its closest point to the Lake.
- 9) The overall reduction of encroachment totals at least 1,810 sq. ft. and thus complies with the provisions of Article 7.5.4 of the Moultonborough Zoning Ordinance.
- 10) The existing non-conforming deck area will be replaced with a pervious patio in the same location and the project overall complies with the provisions of Article 4.7 of the Ordinance.
- 11) The proposed construction will require an approved NH DES Shoreland Impact Permit.
- 12) There were no members of the public wishing to speak on this application during the public hearing.
- 13) Two letters were submitted by abutters in support of the project.
- 14) Granting the Variance would not be contrary to the public interest as the Proposed House will be located significantly farther from the Lake than the existing house, will have less impact within the 50-ft setback from the Lake, and a new septic system, that would be beneficial to the public interest of improving/maintaining water quality for the lake.
- 15) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #14 above.
- 16) By granting the Variance, substantial justice would be done because there would be no gain to the public as the variance would be beneficial for lake water quality and would still allow the Applicant to redevelop their house and denying it would be a substantial injustice.
- 17) Granting the Variance would not diminish the value of surrounding properties as the construction would be new, the Proposed House and Garage will comply with Side setbacks, the septic system will be new, and the new dwelling will be moved farther away from the 50-ft setback from the Lake.
- 18) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the size, shape and location of the Property, the fact that there is an existing non-conforming House, Deck and Garage; the location of the Existing House on the Property that is more non-conforming than the Proposed House, and the ability to obtain the necessary Septic Permits from DES.

On April 7, 2021, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, St. Peter, DeMeo, Jenny, Poloian) and none (0) opposed to grant the request for the variance for Daniel &

Helene B. Demmer, Trustees of the Windermere Legacy Realty Trust, Tax Map 291, Lot 22 for the construction of a 7-bedroom house located 32.5-ft. at its closest point to the Lake, within the required 50-ft lake setback, with the following conditions: 1) The NHDES Shoreland Permit submission required for this project use the same plans (Exhibits A & B, prepared by Ames Associated on 3/4/21) presented with this variance application and that the permit be approved and submitted to the Land Use Department prior to submittal of the building permit applications; 2) The NHDES Septic system approval be approved and submitted to the Land Use Department prior to submittal of building permit applications, 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 April 21, 2021, 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, Jenny, Hopkins), and none (0) opposed.

The decision made to Approve the variance on April 7, 2021, 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: April 21, 2021

cc. Christopher Boldt (by email only at cboldt@dtelawyers.com)
Nicol Roseberry (by email only at nicol@amesassociates.com)
Map Lot Document File