



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance Michael Muise Tax Map 66, Lot 19

August 19, 2021

**Applicant: Michael Muise
5 Quimby Road
Meredith, NH 03253**

Location: 915 Whittier Highway, Moultonborough, NH (Tax Map 66 Lot 19)

On August 18, 2021, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Michael Muise (hereinafter referred to as the “Applicant” and/or “Owner”) for a variance from Article 12.5.2 of the Zoning Ordinance to permit a post-development storm water runoff volume that exceeds the pre-development level for a 24-hour, 50-year storm event, on the parcel located in the Commercial Zone A, Groundwater Protection Overlay District and the Village Center Overlay 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 915 Whittier Highway (Tax Map 66, Lot 19).
- 2) The owner of the record of lot is Lacey Irrigation, LLC, Thomas J. Lacey, Reg. Agent.
- 3) The lot is located in the Commercial Zone A Zoning District, Groundwater Protection Overlay District, and the Village Center Overlay District.
- 4) Jim Hambrook, Hambrook Land Surveying, presented the application for variance. Present for the hearing was Mark R. Moser, P.E. from Moser Engineering and Mike Muise.
- 5) The applicant is requesting relief from the Article 12.5.2 of the Zoning Ordinance to permit a post- development storm water runoff volume that exceeds the pre-development level for a 50 year storm event.

- 6) Members questioned the easement for a shared common driveway, the maintenance of the retention/fire pond, drainage, wetlands, impacts and effects on down gradient properties and Moulton Drive, rate and volume of water entering and exiting the site pre and post development.
- 7) Members questioned the size of Tax Map 66, Lot 19, and the size of the proposed structure, as well as the proposed lot coverage.
- 8) One abutter noted that stormwater mitigation and improvements that were made on the Dollar General site has helped with lessening water on her property.
- 9) The applicant and agents presented supporting documents showing that the proposed Engineering and drainage would have no adverse effect on down gradient properties.
- 10) Granting the Variance would not be contrary to the public interests as the proposed use will not alter the essential character of the neighborhood because the engineering plans provide the necessary measures for the proposed development and provide adequate protections to surrounding properties.
- 11) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated above.
- 12) By granting the Variance, substantial justice would be done because there would be a clear loss to the Applicant that is not outweighed by any gain to the public as the lot was previously approved for a similar commercial use prior to the current ordinance, and the abutting commercial use was granted a similar variance on an undeveloped property in 2015.
- 13) Granting the Variance would not diminish the value of surrounding properties as it is in keeping with both the residential character and commercial uses of the neighborhood properties. The proposed development fits the neighborhood and will add value to the Property and will not diminish surrounding property values, and the property is located in Commercial Zone A
- 14) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the lot was created prior to the enactment of the Zoning Ordinance so the Ordinance itself creates the hardship, and the proposed use is a reasonable use as the lot is located in the Commercial A zone.

On August 18, 2021, the Zoning Board of Adjustment decided by a vote of five (5) in favor (St. Peter, Poloian, DeMeo, Mills, Stephens) and none (0) opposed to grant the request for the variance from Article 12.5.2 for Michael Muise, Tax Map 66, Lot 19 to permit post-development runoff volume which will exceed pre-development runoff volume for a 24-hour, 50-year storm event with the following conditions:

- A. All required federal, state, and local approvals, including site plan review approval shall be obtained prior to commencement of commercial development activity.
- B. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
- C. The applicant and owner are solely responsible to comply with conditions of approval.
- D. Per RSA 674:33, approval expires on 8/18/2023 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 September 15, 2021, 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 five (5) in favor (St. Peter, Poloian, DeMeo, Mills, Stephens), none (0) opposed, and no (0).

The decision made to grant the variance on August 18, 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

cc. Jim Hambrook (by email only at jimhambrook@gmail.com)
Steve Zalewski (by email only at szalewski@moultonboroughnh.gov)
Map Lot Document File