



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision**

**Request for Variance from Sections 3.2.4, 9.1.4, 7.5.1 and 7.4.1**

**Kenneth L. & Jeanne K. Hagar, Trustees**

**of the KJH Realty Trust**

**Tax Map 271, Lot 13**

**June 2, 2021**

**Applicant: Kenneth L. & Jeanne K. Hagar, Trustees  
of the KJH Realty Trust  
111 Williams Street  
Mansfield, MA 02048**

**Location: 112 Deerhaven Road (Tax Map 271, Lot 13)**

On June 2, 2021 the Zoning Board of Adjustment of the Town of Moultonborough held a remote public hearing on the application of Kenneth L. & Jeanne K. Hagar, Trustees of the KJH Realty Trust (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a Variance from Moultonborough Zoning Ordinance Sections 3.2.4, 9.1.4, 7.5.1 and 7.4.1 of the MZO to allow an existing three-season porch on the primary residence to be expanded over an existing patio and to allow an existing deck on a separate guest house to be replaced and reconfigured, both within the 50 foot setback from a "channelized" intermittent stream, 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 112 Deerhaven Road (Tax Map 271, Lot 13).
- 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 3 season porch is located approximately 4 feet from the Stream, immediately adjacent to the point where the Stream is channeled into an underground pipe.

- 6) The Deck is located approximately 20 feet from the Stream, at its closet point.
- 7) The Applicants have received a Shoreland Permit by Notification #2021-00711 from the New Hampshire Department of Environmental Services.
- 8) The Applicants are proposing two separate items of improvement to the property: (i) the expansion of the primary residence's existing three season porch over an area currently covered by steps and impervious patio and within the 50 foot setback required by Articles 3.2.4 and 9.1.4 from the "channelized" intermittent stream ("the stream"); and (ii) to allow the reconfiguration of an existing deck on an existing guest house also within the 50 foot setback from the Stream required by Article 3.2.4.
- 9) The Application also seeks a Variance from Article 7.5.1 to allow minor expansions of the existing two non-conforming structures.
- 10) The Application further seeks a Variance from Article 7.4.1 for the expansion of non-conforming uses.
- 11) There were no members of the public wishing to speak on this application during the public hearing.
- 12) Granting the Variance would not be contrary to the public interest as the proposed expansion to the Porch involves a 6-foot expansion adjacent to the "channelized" Stream and over a portion of the existing impervious patio; and the deck is swapping 2 feet of deck from one side of the building to the other and because no public gain results from requiring the 50-ft. setback since the intent is to curtail sedimentation and water quality impacts to streams and stream banks and in this case the stream has manmade walls and streambed.
- 13) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #12 above.
- 14) 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 variance would allow the Applicant to make minor improvements to the two existing structures and denying it would be a substantial injustice because the intent of the ordinance is not required in this instance (see Item #12 above).
- 15) Granting the Variance would not diminish the value of surrounding properties as the projects would improve the value of the Property and the value of the surrounding properties, therefore increasing taxes.
- 16) 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 the Property has an existing non-conforming Primary Residence, Garage, Guesthouse, decks and patios; The Property has the "channelized" intermittent Stream adjacent to the area of Porch Project and Deck Project. The channelized stream (said channelization and piping done many years ago) has manmade banks and bed, and that the reason for setbacks does not apply to this

stream's condition; and the Property has obtained the necessary Shoreland Permit by Notification from DES. Therefore, these variances are reasonable.

On June 2, 2021, the Zoning Board of Adjustment voted by a vote of five (5) in favor (DeMeo, Jenny, St. Peter, Poloian, Stephens) and none (0) opposed to grant the request for the variance for Kenneth L. & Jeanne K. Hagar, Trustees of the KJH Realty Trust, Tax Map 271, Lot 13 to allow an existing three-season porch on the primary residence to be expanded over an existing patio and to allow an existing deck on a separate guest house to be replaced and reconfigured, both within the 50 foot setback from a "channelized" intermittent stream, with the following conditions: 1) The plan of proposed conditions submitted as part of the variance application dated May 13, 2021 shall be submitted with the required building permit applications; 2) The existing number of dwelling units shall remain the same and shall not be increased, 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 June 16, 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 (St. Peter, Poloian, DeMeo, Jenny, Stephens), and none (0) opposed.

The decision made to Approve the variance on June 2, 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. Christopher Boldt (by email only at [cboldt@dtclawyers.com](mailto:cboldt@dtclawyers.com))  
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Map Lot Document File