



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

### **Notice of Decision**

### **Request for Variance**

**Moultonborough Realty Trust/John J. O'Brien Trustee**

**Tax Map 147, Lot 31**

**November 18, 2020**

**Applicant:** Moultonborough Realty Trust  
John J. O'Brien Trustee  
412 Washington Street  
Weymouth, MA 02188

**Location:** 166 Wentworth Shores Road, Moultonborough, NH (Tax Map 147, Lot 31)

On March 4, 2020, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Moultonborough Realty Trust (hereinafter referred to as the "Applicant" and/or "Owner") to obtain a Variance from MZO Article III. A, Table I and IV.C (2) to allow for the removal and replacement of a nonconforming grandfathered second dwelling on a lot, where the minimum lot area requirement is not met and where the minimum required shore frontage is not met and the dwelling is to be located within the shore setback 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 166 Wentworth Shores Road, Moultonborough, NH (Tax Map 147 Lot 31).
- 2) The Moultonborough Realty Trust is the owner of record for the lot.
- 3) The lot is in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in the district.
- 4) Claire Wilkens of Misiasek Turpin, pllc presented the application to the Zoning Board of Adjustment at the first hearing. Scot O'Brien presented the application at the remaining hearings.
- 5) The applicant is proposing the removal and replacement of a nonconforming grandfathered second dwelling on a lot.
- 6) The setback affected is the fifty foot (50') lake setback line.
- 7) The minimum lot area requirement is not met, and the minimum required shore frontage is not met.

- 8) No members of the public spoke to the Variance request.
- 9) On March 4, 2020, the ZBA voted 5-0 to continue the Public Hearing to April 15, 2020.
- 10) On April 15, 2020, the ZBA voted 5-0 to continue the Public Hearing to June 3, 2020.
- 11) On June 3, 2020, the ZBA voted 5-0 to continue the Public Hearing to September 16, 2020.
- 12) On September 16, 2020, the ZBA voted 5-0 to continue the Public Hearing to October 7, 2020.
- 13) On October 7, 2020, the ZBA voted 5-0 to continue the Public Hearing to November 4, 2020.
- 14) On November 4, 2020, the ZBA voted 5-0 to continue the Public Hearing to November 18, 2020.
- 15) Granting the Variance would not be contrary to the public interest as the applicant is making slight improvements to the property and the proposed construction will not alter the essential character of the neighborhood because it would be upgrading an existing condition by constructing a new home in approximately the same location as the prior dwelling on the site, and most importantly, not change the intent of the ordinance for setbacks which is adequate provision of light and air between buildings.
- 16) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as Criteria 1 contained above in #15.
- 17) By granting the Variance, substantial justice would be done because there is no public benefit to be gained by denying the second dwelling, while the loss to the applicant would be great, especially since the applicant shall employ water quality best management practices in the form of roof drip edge filtration trenches for the replaced dwelling where there had been none previously.
- 18) Granting the Variance would not diminish the value of surrounding properties as the proposed new dwelling will be new construction which will increase the value of the subject property and construct water quality improvement methods, thereby increasing neighborhood valuations.
- 19) Special conditions exist for the subject property, such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship. The Applicant's property already has other buildings on it which coupled with the lot size and shape limits the ability to use the property reasonably and in the manner that it has been used in the past. The buildings and their current use are grandfathered, and the property owners have a right to use them in that way. The proposed use is a reasonable use of the property and does not alter the character of the neighborhood.
- 20) On November 18, 2020, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Bickford, St. Peter, DeMeo, Jenny) and none (0) opposed to grant the request for the variance to allow for construction of a 30' x 40' structure to replace one of the dwellings on the property, based on the latest plans submitted November 14, 2020, subject to the following conditions: 1) The garage/bunkhouse shall NOT be used as a dwelling unit; 2) Installation of water mitigation on every roofline where water drips; 3) This Notice of Decision shall be recorded at the Carroll County Registry of Deeds, 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 December 16, 2020, 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, Bickford, St. Peter, DeMeo, Jenny), and none (0) opposed.

The decision made to grant the variance on November 18, 2020, 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.

A handwritten signature in blue ink, reading "Robert H. Stephens", is written over a horizontal line.

Robert H. Stephens  
Chairman

Date: December 16, 2020

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