



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision **Request for Variance**

Edward H. & Jacqueline Sutcliffe/Map 200, Lot 44

September 19, 2019

Applicant: Edward H. & Jacqueline Sutcliffe
PO Box 1005

Center Harbor, NH 03226

Location: 143 Swallow Point Road, Moultonborough, NH (Tax Map 200, Lot 44)

On September 18, 2019, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Edward H. & Jacqueline Sutcliffe (hereinafter referred to as the "Applicant" and/or "Owner") to obtain a Variance from MZO Article III. B.1, 3 & 4 to allow for the construction of a dwelling 5.1 ft. from the lake setback line, where 50 ft. is required, 4.8 ft. from the side setback, where 20 ft. is required, and 24.2 ft. from the centerline of the road, where 50 ft. is required on the parcel located in the Residential Agricultural (RA) Zoning District.

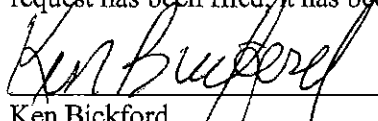
Based on the application, testimony given at the hearings, additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 143 Swallow Point Road, Moultonborough, NH (Tax Map 200 Lot 44).
- 2) The applicants are the owners 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) The applicants were represented at the Public Hearing by Robert Stephens from RH Stephens Building Contractor.
- 5) The applicants' representative waived their right to a five (5) member Board of Adjustment, there being only four (4) members present and able to review the application on September 18th.
- 6) The proposal is for the construction of a dwelling 5.1 ft. from the lake setback line, where 50 ft. is required, 4.8 ft. from the side setback, where 20 ft. is required, and 24.2 ft. from the centerline of the road, where 50 ft. is required after the demolition of the existing non-conforming residential dwelling.
- 7) The setbacks affected are the fifty foot (50') lake setback line, the twenty foot (20') side setback and the fifty foot (50') from the centerline of the improved surface.
- 8) No members of the public spoke to the Variance request.

- 9) Granting the Variance would not be contrary to the public interest as the proposed construction will not alter the essential character of the neighborhood because it would no longer be encroaching onto the abutting property, improve water quality through best practices, the proposed single-family dwelling will become less nonconforming, and most importantly, not change the intent of the ordinance for setbacks which is adequate provision of light and air between buildings.
- 10) Granting the Variance would be consistent with the spirit of the Ordinance because the proposed construction does not alter the essential character of the neighborhood because it would no longer be encroaching onto the abutting property, improve water quality through best practices, the proposed single-family dwelling will become less nonconforming, and most importantly, not change the intent of the ordinance for setbacks which is adequate provision of light and air between buildings.
- 11) By granting the Variance, substantial justice would be done because there is no public benefit to be gained by denying the construction of a single-family and the dwelling will be more nearly conforming with the Zoning Ordinance and NH DES Shoreland, while the loss to the applicant would be great.
- 12) Granting the Variance would not diminish the value of surrounding properties as the proposed new dwelling will eliminate the encroachment onto to the abutting lot and will be new construction which will increase the value of the subject property and thereby increasing neighborhood valuations.
- 13) 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 lot is constricted by setbacks on all sides. There is no conforming buildable area on the lot as the road, side and lake setbacks overlap. The Board determined that due to these unique conditions, a variance is necessary to enable the reasonable use of the property.
- 14) On September 18, 2019, the Zoning Board of Adjustment voted by a vote of four (4) in favor (Bickford, St. Peter, DeMeo, Buy) and none (0) opposed to grant the request for the variance for the construction of a dwelling and deck to be located 5.1 ft. from the lake setback line, where 50 ft. is required, 4.8 ft. from the side setback, where 20 ft. is required, and 24.2 ft. from the centerline of the road, where 50 ft. is required with the following conditions: 1) That the foundation location be pinned prior to construction; 2) Receipt of an approved NHDES Shoreland Permit using the submitted with the application to the Zoning Board of Adjustment; 3) The submitted plan becomes part of the approval; 4) Amending the request to include the 8' x 12' shed depicted on the plan which was for a "replacement shed" shown and approved on building permit #7700 on June 14, 2017, 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 October 2, 2019, approved this formal Notice of Decision language and authorized the Vice-Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of three (3) in favor (St. Peter, DeMeo, Buy) and two (2) abstentions (Stephens, Jenny).

The decision made to grant the variance on September 18, 2019, 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.



Ken Bickford
Vice-Chairman, Zoning Board of Adjustment

Date 10/16/19