



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

### **Notice of Decision**

#### **Request for Variance**

**Edward F. Finn III/Map 140, Lot 5**

**August 2, 2018**

**Applicant: Edward F. Finn III**

**67 Allen Street**

**E. Bridgewater, MA 02333**

**Location: 134 Bean Road, Moultonborough, NH (Tax Map 140, Lot 5)**

On August 1, 2018, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Edward F. Finn III (hereinafter referred to as the "Applicant" and/or "Owner") to obtain a Variance from MZO Article III, B (1) to allow for the construction a deck to the back of the existing non-conforming structure where a portion will be located approximately 12 ft. at its closest point and 13 ft. at its furthest from the right-of-way, where a 25 ft. setback is required on the parcel located in the Residential Agricultural (RA) Zoning District.

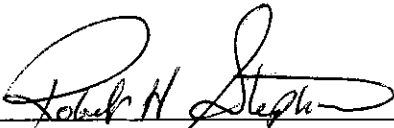
Based on the application, testimony given at the hearings, additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 134 Bean Road, Moultonborough, NH (Tax Map 140, Lot 5).
- 2) The applicant is a Co-owner of record for the lot.
- 3) Edward F. Finn, III presented the application for the variance.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in that district.
- 5) The applicant is proposing to construct of a deck to the back of the existing non-conforming structure where a portion will be located approximately 12 ft. at its closest point and 13 ft. at its furthest from the right-of-way.
- 6) The setback affected is the twenty-foot (25') from the edge of the right-of-way.
- 7) No members of the public spoke to the Variance request.
- 8) Granting the Variance would not be contrary to the public interest as the Board felt that the encroachment into the right-of-way setback did not alter the character of the neighborhood nor threaten the welfare, safety or health of the public because the proposed deck will not encroach further into the setback than that of the existing encroachment of the non-conforming garage.

- 9) 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 and it will not change the intent of the ordinance for setbacks which is to provide adequate provision of light and air between buildings.
- 10) By granting the Variance, substantial justice would be done because there is no public benefit to be gained by requiring the deck be constructed in a conforming location due to the unique location of the existing dwelling and garage on the subject property, while the loss to the applicant would be great.
- 11) Granting the Variance would not diminish the value of surrounding properties as the proposed addition will increase the value of the subject property and thereby increasing neighborhood valuations.
- 12) Special conditions exist for the subject property, such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship. The location of the existing non-conforming garage which encroaches on the right-of-way setback line. The Board determined that the 16' right-of-way on the abutting property was a unique condition, and the deck is a reasonable use of the residential property.
- 13) On August 1, 2018, 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 for a deck as requested with the following conditions: 1. The Applicant submit a detailed and dimensioned sketch plan to the Land Use Department prior to the issuance of any building permit for the construction of the proposed deck; 2. No portion of the proposed deck and stairs shall encroach closer into the right-of-way setback than the existing non-conforming garage, 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 August 15, 2018, 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, Zewski) and none (0) opposed.

The decision made to grant the variance on August 1, 2018, 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.

  
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Robert H. Stephens  
Chairman, Zoning Board of Adjustment

Date 8/17/18