



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision **Request for Variance**

Edward John, Jr. & Jane Smits/Map 132, Lot 54

September 7, 2017

Applicant: **Edward John, Jr. & Jane Smits**
127 Fox Blvd,
Massapequa, NY 11758

Location: **77 Richardson Shores Road, Moultonborough, NH (Tax Map 132, Lot 54)**

On September 6, 2017, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Edward John, Jr. & Jane Smits (hereinafter referred to as the "Applicant" and/or "Owner") to obtain Variances from MZO Article VII. (E) (1 & 4) and Article III. B (4) to permit the expansion of a portion of the screened porch located 36 ft. (at its closest point) from the lake setback line 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, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 77 Richardson Shores Road (Tax Map 132, Lot 54).
- 2) The Applicants are the owners of record for the lot.
- 3) The Zoning Board of Adjustment granted a variance on August 20, 2014 for to permit the construction of an addition 16' 8" from the property line, and to expand the existing dwelling by 808 square feet.
- 4) John Smits presented the application for the variance. He provided both a site plan and elevation plan for the proposed addition.
- 5) The lot is located in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in that district.
- 6) The proposal is for the construction of an addition to a screened porch of 106 square feet, of which approximately 41 square feet falls outside of the existing shoreline setback of the house. With the closest point being approximately 36' from the shoreline setback.
- 7) The Applicants have received a NH DES Shoreland Permit by Notification #2017-02466.

- 8) No members of the public spoke on the Variance request.
- 9) Granting the Variances would not be contrary to the public interest as the addition will not alter the essential character of the neighborhood because other properties have the same kinds of encroachment and size similarities.
- 10) Granting the Variances would be consistent with the spirit of the Ordinance because the residential use is a permitted one, therefore expanding the use is not contrary to the intent of the ordinance, as it would not alter the character of the neighborhood or threaten the public health, safety or welfare of the neighbors.
- 11) By granting the Variances, substantial justice would be done because there is no public benefit to be gained, while the loss to the applicant would be great.
- 12) Granting the Variances would not diminish the value of surrounding properties as the property would more closely resemble the neighboring properties development and it is new construction in keeping with the residential character of the neighborhood.
- 13) A literal enforcement of the provisions of the Ordinance will result in unnecessary hardship because the intent of this provision is to sunset nonconforming uses in a zoning district by not allowing them to expand (or capping said expansion), and in this case, this is a nonconforming use, therefore the ordinance provision itself is the hardship. In addition, the topography, the ledge, and the existing location of the dwelling, result in a many-faceted hardship in this case.
- 14) On September 6, 2017, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Zewski, St. Peter, Jenny, Hopkins) and none (0) opposed to grant the request for the variances and in agreement with the Applicant to rescind the August 20th, 2014 variance approval, 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 4, 2017, 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, Zewski, St. Peter, DeMeo), none (0) opposed.

The decision made to Grant the variances on September 6, 2017 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

Date 10/5/17