



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance Joseph F. Fellini /Map 92, Lot 23.3

August 19, 2016

**Applicant: Joseph F. Fellini
48 Christina Drive
Walpole, MA 02081**

Location: 12 Sunrise Drive, Moultonborough, NH (Tax Map 92, Lot 23.3)

On August 17, 2016, the Moultonborough Zoning Board of Adjustment opened a public hearing on the application of Joseph F. Fellini (hereinafter referred to as the "Applicant" and/or "Owner") for a variance from Article III, Section I to permit the average height of a structure to be 34 ft. 6 in. (as built), exceeding the overall allowed height of thirty-two (32) feet as described in the Moultonborough Zoning Ordinance 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 12 Sunrise Drive (Tax Map 92, Lot 23.3).
- 2) The Applicant is the owner of record for the lot.
- 3) The lot is located in the Residential Agricultural (RA) Zoning District.
- 4) The applicant and Joe Derba presented the application.
- 5) The provision in the Moultonborough Zoning Ordinance (MZO) in violation is the Height of the building which exceeds the overall height of thirty-two (32) feet above ground level measured as the average of the vertical distances between the ridge of the building and the highest ground level point, and the ridge of the building and the lowest ground level point.
- 6) The applicant is requesting relief to permit the average height of a structure to be 34 ft. 6 in. (as built), exceeding the overall allowed height of thirty-two (32) feet as described in the MZO.

- 7) Don Cahoon, Code Enforcement Officer (CEO) submitted a letter for the record dated August 17, 2016 stating his opinion that the height violation was due to a miscommunication and that he did not see any benefit to reduce the height of the structure.
- 8) Dave Bengtson, Fire Chief submitted an e-mail on August 5, 2016 stating that he has viewed the occupancy and saw no problem with granting the Variance to the structure as built. Noting the Variance should not be construed as an endorsement for extending the building height beyond the maximum height of 32 feet.
- 9) Kevin Quinlan, President of the Balmoral Homeowners Improvement Association spoke in favor of the granting of the Variance.
- 10) Granting the Variance would not be contrary to the public interest as the Association has expressed support for the Variance and the Fire Chief stated that the height (as built) would not create a safety hazard so that there will be no alteration of the essential character of the neighborhood or threat to the public health, safety or welfare.
- 11) Granting the Variance would be consistent with the spirit of the Ordinance the Board felt that the height did not alter the character of the neighborhood nor threaten the public health, safety or welfare of the public based on input received from the CEO and Fire Chief.
- 12) By granting the Variance, substantial justice would be done as it would allow the Applicant to keep the existing trussed roof, not having to remove it. The loss to the applicant would be great and there would be no gain the general public.
- 13) Granting the Variance would not diminish the value of surrounding properties in keeping with the residential character of the neighborhood properties as the building as built fits the neighborhood and will add value to the Property.
- 14) Special conditions of the Property distinguish the Property for other properties in the area and due to the special conditions because the structure exists through an error in compliance. Reducing the ridge height, it would not change the issues of safety to the public (per the MFC). The building is in line with the new construction in the area. The proposed use is reasonable as the Fire Chief has stated that he has viewed the occupancy and saw no problem with granting the Variance to the structure as built. Noting the Variance should not be construed as an endorsement for extending the building height beyond the maximum height of 32 feet. Also noted that it was specified on the Building Permit that the CEO had noted the height was 34' 6" and as a result of a change in contractors the building was constructed through a miscommunication error.
- 15) On August 17, 2016, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Bickford, Zewski, St. Peter, Jenny) and none (0) opposed to grant the request for a variance, ...and 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 September 7, 2016, 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) and none (0) opposed.

The decision made to grant the Variance on August 17, 2016 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 9-9-16