



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision **Request for Special Exception** **OM Moultonboro Realty Trust /Tax Map 142, Lot 1**

November 17, 2016

Applicant: **OM Moultonboro Realty Trust**
109 Raffaele Drive
Waltham, MA 02452

Location: **268 Whittier Highway (Tax Map 142, Lot 1)**

On November 16, 2016, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of OM Moultonboro Realty Trust (hereinafter referred to as the “Applicant” and/or “Owner”) for an application for Special Exception under Article VII.C to allow mixed use of a business (permitted by a previous special exception) and a residential apartment on the parcel located in the Commercial Zone A and RA zoning districts.

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

- 1) The property is located at 268 Whittier Highway (Tax Map 142, Lot 1).
- 2) The owner of the record of lot is Patel D. Kaushik, Trustee of the OM Moultonboro Realty Trust.
- 3) The applicant was represented at the Public hearing by Mark McConkey.
- 4) The lot is in the Commercial Zone A and RA Zoning Districts.
- 5) The existing site contains a convenience store, gas pumps and office space. A new dwelling unit is proposed to be located within the existing commercial structure on the site as well.
- 6) The business use on the property was previously approved by a special exception in 1992. The Planning Board approved a site plan in 1993 and a site plan amendment in 2013.
- 7) One (1) abutter questioned if the special exception was for the whole property or limited to the two-bedroom dwelling being located inside the existing structure. The abutter was

opposed to the special exception if it would allow the applicant to construct a two-bedroom dwelling on the rear of the property.

- 8) One (1) abutter noted his concern with the possibility of transient tenants.
- 9) Agent McConkey stated for the record that they were only requesting for Mixed Use within the existing building.
- 10) The Fire Chiefs comments were the following: The property in question is currently classified as "mercantile" under the Life Safety Code. To change to a mixed occupancy, mercantile and residential, a two-hour separation would need to be created to protect the living space. If approved the residential space would need to comply with the means of escape requirements listed for One and Two Family Dwellings. Specifically, the requirements for windows. The windows in the area proposed appear to be higher than what would be permitted. Windows are required to have the bottom of the opening no more than 44- inches above the floor. Other than these two issues, I do not have any objections to the proposed change if the applicant meets the necessary requirements for a special exception to be granted.
- 11) The specific site is an appropriate location for the use as it is located adjacent to other industrial and commercial businesses.
- 12) The use is compatible with the character of the neighborhood in both the Residential Agricultural Zone and the Commercial A District as it is located adjacent to other residences and commercial businesses.
- 13) The property values in the district will not be negatively impacted by the use in the district as the addition of a residential use inside the existing structure will have no negative impact on neighboring property values and the use is compatible with the neighborhood.
- 14) There will be no nuisance or hazard to pedestrians or vehicles from any activity conducted on the site as there is adequate parking on site and the use will not affect the flow of traffic for the commercial operation.
- 15) There will be no additional burden on Town infrastructure or services by the proposed addition of one residential unit.
- 16) The proposed use complies with the minimum land space requirements of Article III, Table I.
- 17) The capacity of existing roads to carry related traffic is sufficient to allow for the operation of the site as a mixed use without the need for upgrades or repairs of the roadway.
- 18) The owner agrees to make all required recommendations regarding life safety or other protection measures determined by the Fire Chief.
- 19) The application meets all the requirements for a Special Exception under Article VI E.

On November 16, 2016, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Bickford, Zewski, Nolin, St. Peter) and none (0) opposed to grant the request for a special exception with the following conditions: 1) The applicant must meet all recommendations of the Fire Chief regarding Life Safety 101; 2) The special exception is limited to the two-bedroom apartment being located within the existing building, as presented; 3) This Notice of Decision shall be recorded at the Carroll County Registry of Deeds; and further, to close the Public Hearing.

The Board of Adjustment, on December 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, Nolin, St. Peter Jenny, DeMeo) and none (0) opposed.

The decision made to Approve the special exception on November 16, 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 12/12/16