



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

### **Notice of Decision**

### **Request for Variance**

**Westwood Shore Realty Trust;**

**Laurie & Douglas Whitley, Trustees/ Map 112, Lot 53**

**November 7, 2012**

**Applicant: Westwood Shore Realty Trust  
Laurie & Douglas Whitley, Trustees  
PO Box 743  
Center Harbor, NH 03226**

**Location: 111 Coe Point Road, Moultonborough, NH (Tax Map 112, Lot 53)**

On October 3, 2012 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of the Westwood Shore Realty Trust; Laurie & Douglas Whitley, Trustees (hereinafter referred to as the “Applicants” and/or “Owners”) for a variance from Article III, B (4) to allow for the construction of a dwelling structure after demolition of an existing nonconforming dwelling within the 50’ shoreline setback of Lake Kanasatka, where the footprint of the new structure would remain essentially the same, for 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 111 Coe Point Road (Tax Map 112, Lot 53).
- 2) The applicants are the owners of record for the lot.
- 3) The applicants were represented at the Public Hearings by Nicol Roseberry of Ames Associates.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District.
- 5) The lot has frontage on Lake Kanasatka, and therefore has a 50 ft. setback from the shore and has the 50 ft. shore land buffer as per NH RSA 483: B, the Shoreland Water Quality Protection Act.
- 6) The existing dwelling structure is located almost entirely in the 50 ft. setback.
- 7) The existing nonconforming dwelling structure is proposed to be demolished.

- 8) The applicants are proposing the construction of a new dwelling structure within the 50' shoreline setback of Lake Kanasatka, where the footprint of the new structure would remain essentially the same as the demolished structure.
- 9) Storm water management in the form of existing and proposed gutters, and proposed crushed stone infiltration trenches, would provide additional protection of the lake from storm water runoff should the new dwelling be constructed.
- 10) The Applicant has not applied for nor received the necessary Shoreland Impact Permit from the NH DES.
- 11) The ZBA voted 5-0 to conduct a Site Visit and continued the Public Hearing to the Site Visit on October 15, 2012.
- 12) The ZBA conducted a Site Visit on October 15, 2012 and continued the Public Hearing to the regular meeting date of October 17, 2012.
- 13) No members of the public spoke for or against the Variance request.
- 14) Granting the Variance would be contrary to the public interest as the project proposes to remove and replace the existing, nonconforming legal dwelling structure using substantially the same footprint as the existing residence in almost the same location in the 50 ft. setback, and the addition of an attached garage located outside the 50 ft. setback in the building envelope, but not building the new dwelling structure farther back on the lot in the building envelope. The public's interest here is in not perpetuating structures with impervious surfaces close the lake when they are removed for improvement of water quality of the lake when a replacement structure may reasonably be constructed farther from the lake so as to mitigate the degradation of water quality from impervious surface runoff without filtering or treatment.
- 15) Granting the Variance is not consistent with the spirit of the Ordinance as the 50' buffer is intended to provide protection of the lake's water quality which provides for the welfare of the Town's citizens. The proposed residence would slightly increase the distance of the structure from the lake by a couple feet, and the impervious surface coverage within the 50' buffer to the lake would be reduced by 360 sq ft., however, it was felt that the spirit was not being met since the new dwelling structure could be reasonably built within the building envelope on the lot. The argument that there would be a greater quality of storm water protection than currently exists on the site because Storm water management would be installed in the form of crushed stone trenches under the drip edges of the residence eave overhangs, and along the driveway, to provide interception and opportunity for infiltration of storm water before it reaches the lake, was not accepted by the Board since these measures could be installed whether a new dwelling was being constructed or not.
- 16) By denying the Variance, substantial justice is done because a new dwelling structure may be constructed reasonably within the building envelope on the lot. The argument that the current residence location is an immense factor in the current value of the property, affording lake views that cannot be duplicated in other locations on the property, and that denying the variance would prevent the structure from being rebuilt cost-effectively, thereby reducing the energy-efficiency of the new residence with no outweighing benefit to the public was not accepted by the Board. It was felt that the existing nonconforming structure could reasonably be rehabbed and upgraded without the need for a variance, or that the applicant could reasonably demolish and rebuild in the buildable envelope.

- 17) The Board did accept that granting the Variance does not diminish the value of surrounding properties as the proposed residence would be set back slightly further from the shoreline, would be constructed in a configuration very similar to the existing footprint within the 50' shoreline buffer, and width along the shoreline would be no greater than the existing structure. The new residence would result in a structure of updated construction, and be aesthetically-pleasing. They noted, however, that updating the existing nonconforming structure would do the same.
- 18) There is a fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of that provision to this property because protection of the lake water quality along the shoreline of Lake Kanasatka may be furthered by denial of this request. Lake water quality is one of the underlying tenets of the Town's Zoning Ordinance and falls under the welfare aspect of the purpose of zoning.
- 19) On October 17, 2012, the Zoning Board of Adjustment voted by a vote of four (4) in favor (King, Nolin, Zewski, Bickford) and one (1) opposed (Stephens), to Deny the request for a variance and to close the Public Hearing. They moved to direct Staff to draft formal Notice of Decision language, to be reviewed by the Board at the November 7, 2012 Regular Meeting.

The Board of Adjustment, on November 7, 2012, approved by a vote of four (4) in favor (Stephens, Nolin, Zewski, King) and one (1) opposed (Hopkins), this formal Notice of Decision and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file.

The decision made to Deny the variance on October 17, 2012 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 \_\_\_\_\_