



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision - DENIAL

Request for Variance – Section 3.2.2.3

James S. Schiemer and Nancy E. Schiemer

Tax Map 129, Lot 82

July 17, 2024

Applicant: **James S. & Nancy E. Schiemer Revocable Trust**
James S. & Nancy E. Schiemer, Trustees
PO Box 640
Moultonborough, NH 03254

Location: **264 Castle Shore Road, Moultonborough, NH (Tax Map 129, Lot 82)**

On December 20, 2023, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of James S. & Nancy E. Schiemer, Trustees of the James S. & Nancy E. Schiemer Revocable Trust (hereinafter referred to as the “Applicant” and/or “Owner”). The Applicants requested a Variance from Zoning Article 3.2.2.3 to retain the addition (“bump out” comprising of approximately 76 sq ft. built in 2021) to the single-family home that encroaches into the side setback, located 10.9 ft. from the side property line, where 20 ft. is required on the parcel located in the Residential Agricultural (R/A) 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 264 Castle Shore Road (Tax Map 129, Lot 82).
- 2) James S. & Nancy E. Schiemer, Trustees of the James S. & Nancy E. Schiemer Revocable Trust are the owners of record for the lot.
- 3) The Applicants were represented by Attorney Christopher Boldt of Donahue, Tucker & Ciandella, PLLC.
- 4) The lot is located in the Residential Agricultural (R/A) Zoning District, and the residential use is a use allowed by right in that district.

- 5) Prior to the start of the hearing, Mr. McDonough made the following statement: For the record, I want to disclose that a road maintenance association, of which I am a member, but not an officer or member of the board, has consulted with Attorney Boldt with respect to its rights and remedies regarding the maintenance of a separate private road. It is my understanding that at this time Attorney Boldt is not representing the association of which I am a member. After due consideration, I have determined that I have no conflict of interest with respect to the applications being presented today by Attorney Boldt, and I confirm that I will consider these applications in an independent, neutral detached and unbiased manner. Mr. Stephens asked members if they had any comments relative to Mr. McDonough's position. It was noted that there were no comments.
- 6) Prior to public input on March 6, 2024, the Zoning Board of Adjustment voted five (5) in favor (Mills, McDonough, Jakobsen, Poloian, Stephens) and none (0) opposed that the proposal did not have the potential for Regional Impact.
- 7) The proposal is to permit the existing one-story master bedroom "bump out" comprising of approximately 76 sq. ft. built in 2021 located no closer than 10.9 feet from the southeasterly boundary line where 20 feet is required.
- 8) The applicants have received a NH DES Shoreland Permit (2023-00358) to retain impacts of 357 (SF) of protected shoreland associated with the construction of a 77 SF addition to the existing primary structure and add a 280 SF shed.
- 9) On December 20, 2023, upon request of the applicant, the Board continued the request for a variance from Article 3.2.2.3 to February 7, 2024.
- 10) The Public Hearing was re-opened at the February 7, 2024 ZBA meeting, and at the request of the applicant's agent, due to there not being a 5 member board, was continued to March 6, 2024.
- 11) The Public Hearing was re-opened at the March 6, 2024 ZBA meeting, and at the request of the applicant's agent, and was continued to, was continued to May 1, 2024 to allow time for a full Existing Conditions Plan to be prepared by a licensed land surveyor.
- 12) The Public Hearing was re-opened at the May 1, 2024 ZBA meeting, and at the request of the applicant's agent, was continued to July 17, 2024, to allow time for the full Existing Conditions Plan to be completed by James Hambrook.
- 13) A plan prepared by Hambrook Land Surveying, titled Boundary and Existing Conditions Plan, signed/dated 6/7/24 by Matthew Hayden, was submitted on June 10, 2024, as additional information.
- 14) The Board was in receipt of four letters in support of the project.
- 15) One abutter spoke in opposition to the project.

- 16) A representative of the Conservation Commission noted concerns with quality of the lake, stormwater runoff, and the location of the proposed addition and shed.

On July 17, 2024, the Zoning Board of Adjustment voted by a vote of two (2) in favor (DeMeo, Stephens), and three (3) opposed (Mills, McDonough, Jakobsen) to grant the request for variance from Section 3.2.2.3 for James S. & Nancy E. Schiemer, Trustees of the James S. & Nancy E. Schiemer Revocable Trust, 264 Castle Shore Road, Tax Map 129, Lot 82.

As the motion to grant the variance failed by a 2 in favor, 3 opposed, one member who disapproved the motion proposed a new motion to deny the application. Prior to making such motion, Members entered into deliberative session to discuss specific grounds for such denial.

- 17) Granting the Variance would be contrary to the public interest and would not be consistent with the spirit of the ordinance as the Board felt that the single-story bump out is a further intrusion into the Side Setback, and this intrusion is not overridden by the fact that the existing garage has its own grandfathered intrusion and it has the potential to change the character of the neighborhood in a negative way by permitting the bump out to further intrude into the Side Setback.
- 18) By granting the variance, substantial justice would be done as there is a clear loss to the Applicants that is not outweighed by any gain to the neighborhood if the Variance is denied.
- 19) By granting the Variance, there could be a diminution in value of the abutting property as there is some evidence that is persuasive to some members personal ability to look at the property, to envision what the bump out would look like, to envision the intrusion into the Side Setback, as well as lending creditability to the testimony of the abutter, and in taking into consideration the expert testimony of the real estate agent.
- 20) The Board discussed the hardship criteria and did not identify any special conditions of the property that distinguished it from other properties in the area, or that the property could not be reasonably used in strict conformance with the ordinance and did not come to a consensus as to whether the proposed use is reasonable.

On July 17, 2024, the Zoning Board of Adjustment voted by a vote of three (3) in favor (Mills, McDonough, Jakobsen), two (2) opposed (DeMeo, Stephens), to deny the request for variance from Section 3.2.2.3 for a primary structure bump out for James S. & Nancy E. Schiemer, Trustees of the James S. & Nancy E. Schiemer Revocable Trust, 264 Castle Shore Road, Tax Map 129, Lot 82, as the applicant failed to meet the criteria as referenced during the Board's deliberation.

Further, the Board voted 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.

July 17, 2023
TM 129-82 DENIAL

The Board of Adjustment, on August 7, 2024, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision, send to the applicant and place same in the case file by a vote of five (5) in favor (McDonough, DeMeo, Jakobsen, Mills, Merrill), and none (0) opposed.

The decision made to deny the variance on July 17, 2024, 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.



Michael D. Mills
Vice- Chairman,
Zoning Board of Adjustment

cc. Jeff Blackwell – Building Inspector (by email only at jblackwell@moultonboroughnh.gov)
Christopher Boldt, Esq. (by email only at cboldt@dtclawyers.com)
Map Lot Document File

COPY