



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance John & Lynda Barry Tax Map 166, Lot 27

July 17, 2024

Applicant: John and Lynda Barry, Trustees
Barry Family Trust
200 Deer Street, Apt 1212
Milford, MA 01757

Location: 48 Driftwood Drive, Moultonborough, NH (Tax Map 166, Lot 27)

On July 17, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of John and Lynda Barry (hereinafter referred to as the "Applicant" and/or "Owner"). The Applicants requested a Variance from MZO Section 3.2.2.3.

At the regular meeting held on Wednesday, July 17, 2024, the Zoning Board of Adjustment (the Board) voted by a vote of five (5) in favor (Mills, McDonough, DeMeo, Jakobsen, Stephens), none (0) opposed, to conditionally **grant** the variance from Section 3.2.2.3 for the Barry Family Trust, located at 48 Driftwood Drive, Tax Map 166, Lot 27, to allow for the existing nonconforming structure, to remain within 17.2 feet from the side property line where 20 feet is required on the parcel located in the Residential Agricultural (R/A) Zoning, partially within the Groundwater Protection Overlay 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 48 Driftwood Drive (Tax Map 166, Lot 27).
- 2) The Barry Family Trust is the owner of record for the lot, John and Lynda Barry, Trustees.
- 3) John Barry presented the application for the variance.

- 4) The lot is located in the Residential/Agricultural, partially within the Groundwater Protection Overlay District, and the residential use is a use allowed by right in that district.
- 5) Prior to public input, the Zoning Board voted five (5) in favor (Mills, McDonough, DeMeo, Jakobsen, Stephens) that the proposal did not have the potential for Regional Impact.
- 6) The proposal is to retain the existing foundation footprint which encroaches the southerly side setback 17.2 feet from the property line where 20 feet is required.
- 7) A plan prepared by Ames Associates, titled Existing Conditions ZBA Exhibit, dated 6/25/24 was submitted as part of the application package.
- 8) One abutter submitted a letter in favor of the project.
- 9) Granting the Variance will not be contrary to the public interest as the garage has been in existence for 30-35 years, with minimal intrusion into the side setback of the adjoining property. There has been no identifiable negative impact on the public interest (health, safety, or welfare) to include the neighboring property owners.
- 10) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #9 above.
- 11) By granting the Variance, substantial justice would be done as the existing structure has existed for 30-35 years with no negative impact to the existing property or surrounding properties, nor has there been any objection.
- 12) Granting the Variance does not diminish the value of surrounding properties as it will not cause any overcrowding or change in the character of the neighborhood, it is a reasonable use and will be new construction adding value to the property. The variance that is requested is only a de minimis intrusion into the setback and has been there for 30-35 years.
- 13) Special conditions of the Property distinguish it from other properties in the area as the residential structure has existed for decades with no know identifiable negative impact to the public interest (health, safety, or welfare), and due to the orientation of the building on the property and the slope of the property limits the relocation of the garage. The proposed use is for a garage on a residential lot and is a reasonable use in New Hampshire.

On July 17, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Mills, McDonough, DeMeo, Jakobsen, Stephens) and none (0) opposed to grant the request for the Variance from Section 3.2.2.3 for the Barry Family Trust, for property located at 48 Driftwood Drive, Tax Map 166, Lot 27 to permit an existing foundation footprint incursion into the southerly setback line as shown on the plan titled Existing Conditions ZBA Exhibit prepared by Ames Associates, dated 6-25-24 to remain,, subject to the following conditions:


1. If applicable, all requirements of the Groundwater Protection Overlay District Ordinance shall be perpetually upheld.

2. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
3. The applicant and owner are solely responsible for complying with the conditions of approval.

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.

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 grant 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)
Map Lot Document File