



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Section 3.2.2.3 & 3.2.2.4

John T. McGee

Tax Map 217, Lot 43

May 9, 2024

**Applicant: John T. McGee
2 Mary Ann Lane
Merrimack, NH 03054**

Location: 2 Panther Path (Tax Map 217, Lot 43)

On May 1, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of John T. McGee (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a Variance from Moultonborough Zoning Articles 3.2.2.3 & 3.2.2.4 of the MZO for a parcel located at 2 Panther Path, Tax Map 217 Lot 43. The applicant proposes to construct a new home, with an attached garage, in a more conforming location to be located no closer than 14.5 feet at its closest point, from the Easterly Boundy Line, and no closer than 15 feet at its closest point from the Westerly Boundary Line where 20-ft is required and 28.5 feet from the lake where 50-ft is required on a parcel located in the Residential/Agricultural Zoning District.

At the meeting, the Zoning Board of Adjustment voted by a vote of five (5) in favor, and none (0) opposed, that relief from Zoning Article 3.2.2.4 (50-foot Lake Setback) is not required as the calculations provided in the applicant's submission, the new areas of encroachment meet the requirements of Zoning Article 7.5.4.1.

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 2 Panther Path (Tax Map 217, Lot 43).
- 2) John T. McGee are the owners of record for the lot.
- 3) The lot is in the Residential Agricultural (R/A) Zoning District.
- 4) Attorney Christopher Boldt of Donahue Tucker & Ciandella, PLLC represented the Applicant.
- 5) The proposal is to construct a new home, with an attached garage, in a more conforming location to be located no closer than 14.5 feet at its closest point, from the Easterly Boundy Line, and no closer than 15 feet at its closest point from the Westerly Boundary Line where 20-ft is required.

- 6) The Applicant has received a NH DES Shoreland Impact Permit #2023-03266.
- 7) The Impervious Surface Percentage Approved by DES is 29.9%.
- 8) No members of the public spoke in favor of or against the application.
- 9) Granting the Variance would not be contrary to the public interest as the project would not “alter the essential character of the neighborhood: or “threaten the public health, safety or welfare” because the proposed construction overall would be less non-conforming, and the Project as a whole has already received the necessary DES Shoreland Permit.
- 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 because there would be a clear loss to the Applicant that is not outweighed by any gain to the public as the intent of the ordinance regarding setbacks (to curtail overcrowding, ensure safe access, ensure adequate space for buildings and septic systems, and to ensure the lake water quality is protected) is not negated at all and denying it would be a substantial injustice.
- 12) Granting the Variance would not diminish the value of surrounding properties as it will not change the character of the neighborhood, it will be new construction adding value to the Applicant’s Property and the value of the surrounding properties in keeping with the lake-side residential character of the neighborhood.
- 13) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as special conditions of the Property distinguish it from other properties in the area which include the size, shape, and angled nature of the Property, and the existence of the necessary Shoreland and Septic Permits from DES for this Project. The proposed use is reasonable.

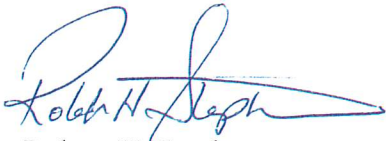
On May 1, 2024, the Zoning Board of Adjustment voted by a vote of four (4) in favor (Mills, McDonough, Poloian, Stephens) and one (1) opposed (Jakobsen) to grant the request for the variance from Sections 3.2.2.3 for John T. McGee, Tax Map 217, Lot 43 to construct a new residence which encroaches two side setbacks, with the following conditions:

- 1) Structure limits shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction.
- 2) Project shall obtain necessary state and local permits, to include approval of a town building permit and NH DES Shoreland approval, and all conditions of such permits shall be perpetually complied with, and all necessary inspections shall be successfully completed prior to use.
- 3) Project shall comply with all state and local shoreland, timber and wetlands requirements, including setbacks, buffers, planting requirements, vegetation removal restrictions and impervious surface limitations.
- 4) All representations made by the applicant and applicant’s agent shall be incorporated as a condition of approval.
- 5) The applicant and owner are solely responsible for complying with the conditions of approval.
- 6) Per RSA 674:33, approval expires on 5/1/2026 if use is not substantially acted upon.

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 May 15, 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 (Mills, McDonough, Poloian, Merrill, Stephens), none (0) opposed.

The decision made to grant the variance on May 1, 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.

A handwritten signature in blue ink, appearing to read "Robert H. Stephens", with a long horizontal flourish extending to the right.

Robert H. Stephens
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