



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Zoning Article 3.2.2.3

Karl J. Pessinis & Cynthia A. Pessinis

Tax Map 168, Lot 001

October 16, 2024

Applicant: Karl J. Pessinis
C/O Cynthia A. Pessinis
6 Fieldstone Lane,
Newbury, MA 01922

Location: 61 Blackey Cove Road (Tax Map 168, Lot 001)

On October 16, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Karl J. & Cynthia A. Pessinis (hereinafter referred to as the "Applicant" and/or "Owner") for an application for a Variance from Moultonborough Zoning Article 3.2.2.3 for a parcel located at 61 Blackey Cover Road, Tax Map 168 Lot 1. The applicants propose to the construction of a two-story addition into the northerly side setback 12 feet from the property line, where 20 is required, located in the Residential /Agricultural Zoning District.

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 61 Blackey Cove Road (Tax Map 168, Lot 1).
- 2) Cindy A. Pessinis is the owner of record for the lot.
- 3) The lot is in the Residential Agricultural (R/A) Zoning District, partially within the Groundwater Protection Overlay District.
- 4) Attorney Chris Boldt of Donahue, Tucker, Ciandella, PLLC represented the Applicant.
- 5) The proposal is the construction of a two-story addition into the northerly side setback 12 feet from the property line, where 20 is required, located in the Residential/agricultural Zoning District.
- 6) This is an expansion of an existing, permitted, screened porch, located within the setback and authorized by a prior variance.
- 7) Granting the Variance would not be contrary to the public interest because this minor encroachment of approximately 35 sq. ft. is in a disturbed area of an existing gravel and steppingstone walkway adjacent to an area of significant vegetation on the border of the Property. This minimal expansion will not be noticeable from the road or abutting properties; and the Project is largely in conforming space., Accordingly, granting the Variance will not result in overcrowding or undue concentration of land as the

Project will not alter the prevailing use of the Property for a single-family residence. To ensure that the proposed use complies with all applicable law, the Applicants have already obtained the Permit, which ensures that the proposed use, and construction of the new screened porch and second-story addition, will not be detrimental to the Lake or its vulnerable shorelands. Also, as depicted in Exhibit C, the proposed expansion of the existing screened porch and second-story addition will be consistent with the architecture and design of the existing single-family residence on the Property. As a result, the proposed use will not have any impact upon the essential character of the surrounding neighborhood.

- 8) Granting the Variance would be consistent with the Spirit of the Ordinance for the same reasons as stated in Item #7 above.
- 9) By granting the Variance, substantial justice would be done there is no benefit to be gained by the general public from denying the requested Variance. The Variance does not violate the basic zoning objectives of the Ordinance, it will not endanger the public health, safety, or general welfare, and it will not alter the essential character of the surrounding neighborhood. As such, the ZBA finds that there is no public benefit to be obtained from denying this Variance Application. In contrast, denying this Application will result in a loss to the Applicants. Accordingly, the ZBA find that granting this Variance Application would do substantial justice, while denying this Variance Application would be a substantial injustice in light of the circumstances set forth above.
- 10) Granting the Variance would not diminish the value of surrounding property values, and it was noted that none of the abutters appeared at the meeting or filed any sort of objection.
- 11) Denial of the application would constitute an unnecessary hardship because literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the property distinguish it from other properties in the area. The "special conditions" of the Property for purposes of this Variance criterion include:
 - a. The size, shape, and location of the Property,
 - b. The existing building and existing screened porch already located partially in the Side Setback on the Property,
 - c. The existing deck and stairs partially located in both the Side Setback and the 50' Shoreline Setback, a portion of which are being removed to offset and new impervious coverage;
 - d. The existing driveway and parking areas on the Property,
 - e. The gravel area at the northeast end of the Property, which can be reduced in size to offset any new impervious surface that would be added to the Property in connection with the Project;

These special conditions distinguish the Property from other properties in the area. The Applicants submit that no fair and substantial relationship exists between the general public purpose of the Ordinance provision at issue in this case—namely, the 20-foot Side Setback (Article 3.2.2.3)—and the application of that provision to the Property and this Project. As noted above, the implied purpose of this Article is met by the Applicants in this case because:

- a. The Project will not endanger the public health, safety, or general welfare, as explained in greater detail above, and will not alter the essential character of the surrounding neighborhood,
- b. The proposed expansion of an existing screen porch and second-story addition will be in keeping with the architecture and design of the existing residence, as depicted in Exhibit C,
- c. The Project as a whole will result in minimal encroachment into the Side Setback and a reduced encroachment in the 50-foot Shoreline Setback area of the Property,
- d. The Applicants have already received a Permit from DES concerning the Project; and
- e. The Project will have a net-neutral effect on the impervious surface on the Property.

The board determined that due to these unique conditions, a variance is necessary to enable the reasonable use of the property.

On October 16th, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Mills, McDonough, DeMeo, Stephens, Jakobsen) and none (0) opposed to grant the request for the variances from Zoning Article 3.2.2.3 for Karl J. and Cynthia Pessinis, Tax Map 168, Lot 1 for the construction of a two-story addition into the northerly side setback 12 feet from the property line, subject to the following conditions:

1. Project shall obtain necessary state and local permits, to include approval of a town building permit, and all conditions of such permits shall be perpetually complied with, and all necessary inspections shall be successfully completed prior to use.
2. 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.
3. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
4. The applicant and owner are solely responsible for complying with conditions of approval.
5. Per RSA 674:33, approval expires on 10/16/2026 if use is not substantially acted upon.

On October 16th, 2024, prior to public input, the Zoning Board voted five (5) in favor (McDonough, DeMeo, Stephens, Jakobsen, Mills) that the proposal did not have the potential for Regional Impact

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 December 18, 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 (Stephens, Mills, McDonough, DeMeo, Sperry), no abstentions and none opposed.

The decision made to grant the variance on October 16, 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.



Robert H. Stephens
Chairman

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