



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Zoning Article 3.2.2.3 & 3.2.2.4

Maureen A. O'Brien

Tax Map 120, Lot 090

October 16, 2024

Applicant: **Maureen O'Brien**
135 Eastway
Reading, MA 01867

Location: **10 Windswept (Tax Map 120, Lot 090)**

On October 16, 2024, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Maureen O'Brien (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 for a parcel located at 10 Windswept, Tax Map 120 Lot 090. The applicant proposes a vertical expansion of a garage addition that was permitted more than 20 years ago under different staff and a different owner but was found after a recent survey to be encroaching upon the side and waterfront setbacks.

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 10 Windswept (Tax Map 120, Lot 090).
- 2) Maureen O'Brien 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) Brian Nolan represented the Applicant.
- 5) The proposal is a vertical expansion of a garage addition that was permitted more than 20 years ago under different staff and a different owner but was found after a recent survey to be encroaching upon the side and waterfront setbacks.
- 6) Proposed construction will be 31.5 feet tall.
- 7) Prior land use staff had either approved the project in error or had neglected to follow up on enforcement of conditions sometime around 2001.
- 8) Granting the variance would not be contrary to the public interest as the nonconforming footprint had existed for more than 20 years with no complaints.

- 9) Granting the Variance would be consistent with the Spirit of the Ordinance for the same reasons as stated in Item #8 above.
- 10) By granting the Variance, substantial justice would be done as there was no potential public benefit in denying the application, while there would be significant loss to the applicant should they be required to tear down their garage.
- 11) Granting the Variance will not diminish surrounding property values, as that use had been existing for more than 20 years and is common throughout the neighborhood and NH as a whole.
- 12) 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. This lot has an otherwise-conforming structure that was authorized by municipal staff to be constructed in a non-conforming location more than 20 years ago. The proposed use is an expansion of the existing residential use, on a residential lot and is a reasonable use.

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

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 & 3.2.2.4 for Maureen O'Brien, Tax Map 120, Lot 090 for a vertical expansion of a garage addition that was permitted more than 20 years ago under different staff and a different owner but was found after a recent survey to be encroaching upon the side and waterfront setbacks, subject to the following conditions:

1. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
2. The Applicant and owner are solely responsible for complying with 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 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)
Map Lot Document File