



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance 3.2.2.1, 3.2.2.3 and 3.2.2.4

**Scot W. O'Brien Sr
Tax Map 147, Lot 31**

April 17, 2025

**Applicant: Scot W. O'Brien Sr.
166 Wentworth Shores Road
Moultonborough, NH 03254**

Location: 166 Wentworth Shores Road, Moultonborough, NH (Tax Map 147, Lot 31)

On April 2, 2025, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Scot W. O'Brien Sr. (hereinafter referred to as the "Applicant" and/or "Owner") to obtain Variance from Articles 3.2.2.1, 3.2.2.3 and 3.2.2.4 of the Zoning Ordinance to remove two pre-existing, non-conforming structures, on a pre-existing non-conforming waterfront lot and replace them with one new structure which encroaches the 50-foot roadway set back, the 20-foot side setback and the 50-foot waterfront setback. This is to be located within the shoreland protection area in the Residential/Agricultural (RA) Zoning District.

Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 166 Wentworth Shores Rd (Tax Map 147, Lot 31).
- 2) Scot W. O'Brien Sr. is the owner of record for the lot.
- 3) The lot is located in the Residential/Agricultural (RA) Zoning District, and residential use is a use allowed by right in that district.
- 4) The proposal is to remove two pre-existing, nonconforming structures, on a pre-existing nonconforming waterfront lot and replace them with one new structure which encroaches upon the 50-foot roadway set back, the 20-foot side setback and the 50-foot waterfront setback.
- 5) It was noted by the Board that the impervious lot coverage would exceed 20%.
- 6) The Board determined there is no regional impact.

- 7) It was determined by the Board that relief from the 20' side setback pursuant to Article 3.2.2.3 on the northerly boundary was not necessarily pursuant to the provisions of Zoning Articles 7.5.4.1.
- 8) Planner Sassan stated that significant evidence shows that the dilapidated home on the waterfront portion of the property was not in use at the time (2020) the first variance was issued and has continued to go unused since then and that it is safe to say the second dwelling is not grandfathered.
- 9) The Applicant relinquished their rights to a second dwelling on the property.
- 10) The Applicant has a NH DES Approval for operation (ca200802314-A 3 – 2-bedroom dwellings [total = 900 GPD]) for 6-bedrooms.
- 11) The Board added that the garage/bunkhouse, which was a condition of approval back in 2020, shall not be used as a dwelling unit as a condition of approval.
- 12) Granting of the Variance would not be contrary to the public interest because this proposal reduces the encroachment in the lake setback by approximately 135 square feet by completely eliminating a 978 square foot house that is almost entirely in the setback and eliminating a shed that is wholly within the lake setback and replacing it with a dwelling where very little of the indoor living area is within the lake setback. The proposal also eliminates a 592 square foot house that is mostly within the twenty-foot (20') sideline setback with a structure that only has a corner within the sideline setback. This proposal also increases the distance from the sideline setback from four feet (4 ') to eleven feet (11 '). The proposed reduction to one dwelling will be more in line with the character of the neighborhood which is comprised of mostly single dwellings on a lot. Granting the variances will not threaten the public health, safety, or welfare of the neighborhood or the community as the proposed variances will be reduce encroachments and nonconformities and is more in line with the intent of the ordinance as it decreases the potential impact on the lake and increases the distances from the structures to the lot lines, with the exception of the encroachment into the roadway setback. The requested variances will not be contrary to the public interest.
- 13) Granting the Variance would be consistent with the spirit of the Ordinance because this proposal does not violate the basic objectives of the MZO or threaten public health, safety, or welfare. The pre-existing conditions of the lot, which are substantially more contrary to the provisions of the MZO, are significantly reduced in this proposal. Replacing two dwelling units with one dwelling unit which reduces the encroachment into the lake, side and road setbacks is in keeping with the basic objectives of the MZO which focus on preserving the lake and ensuring that structures are not so close to the side boundaries as to cause congestion and interfere with the health and safety of neighbors and ensuring that no building is too close to the traveled way as to create a dangerous situation. This proposal brings this property much closer to compliance with the MZO and does not alter the essential character of the locality. In addition, removing two dwelling units and replacing them with one eliminates the non-conformance under Section 7.3.2 of the MZO.
- 14) By granting the Variance, Substantial justice will be done with the approval of the variances because the proposed plan is more consistent with the area's present use and development, decreases encroachments within the lake setback, decreases encroachments

along the sidelines and does not increase any encroachment into the road setback. Additionally, granting the variances will allow the Applicant to make better use of the property that is more consistent with the intent of the Zoning Ordinance.

15) Granting the Variance for the proposed plan will not diminish the value of the surrounding properties. Removing older small buildings, some of which are in tough shape and replacing them with one new structure is going to increase surrounding property values rather than diminishing them. New construction of residential homes generally makes a neighborhood more valuable as it demonstrates that property owners are investing in the area. Reducing the encroachment near the boundary with a neighbor generally makes that neighbor's property more valuable as it increases the space between dwellings which provides more privacy and access to light and air. Granting the variances will allow the Applicant to remove structures built in 1985 and 1940 and replace those structures with a new home. The proposed plan ensures that surrounding property values will not be diminished.

16)

- a) The Applicants' property has unique characteristics that enable the use of the property only by encroaching into the setbacks. Wentworth Shores Road bisects the property preventing the use of a significant portion of the lot, the contours of the shoreline further reduce the available building area, the narrowness of the lot limits areas the buildable area by approximately half, and current location of the sewage disposal system further restricts buildable area that is outside of the setbacks set forth in the MZO. The special conditions of this land extremely limit the area in which a structure could exist and make building on this lot, without encroaching in any setback nearly impossible as there is only a limited area in which to place a residential dwelling. These factors create an unnecessary hardship that warrants the granting of a variance for the proposed plan.
- b) As the Court stated in Harborside, the test is no longer whether "special conditions of the land rendered it uniquely unsuitable for the use for which it was zoned." *Id.* at 519. Instead, "hardship exists when special conditions of the land render the use for which the variance is sought reasonable." *Id.* (internal citations and quotations omitted). As stated above, the special conditions and unique character of the land create a hardship for the Applicant regarding compliance with the sections of the zoning ordinance from which variances are sought. The hardship created by these special conditions makes these proposed variances reasonable.

On April 2, 2025, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Merrill, McDonough, DeMeo, Mills, Jakobsen) and none (0) opposed for the granting of the variances from Articles 3.2.2.1 and 3.2.2.4 for Scot W. O'Brien, Tax Map 147, Lot 31, 166 Wentworth Shores Road, Moultonborough, NH 03254, to remove two pre-existing, non-conforming structures, on a pre-existing non-conforming waterfront lot and replace them with one new structure which encroaches the 50-foot roadway set back, the 20-foot side setback and the 50-foot waterfront setback, subject to the following conditions:

- a) Foundation corners shall be located and pinned by a NH licensed surveyor prior to construction.

- b) All necessary federal, state and local approvals, including an approved building permit, must be obtained prior to commencing construction and all necessary inspections shall be successfully completed prior to use.
- c) 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.
- d) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
- e) The applicant and owner are solely responsible for complying with conditions of approval.
- f) Per RSA 674:33, approval expires on 4/2/2027 if use is not substantially acted on.
- g) The garage/bunkhouse across the street shall not be used as a dwelling unit.
- h) The Notice of Decision shall be recorded at the Carroll County Registry of Deeds.
- i) The plans submitted by the applicant shall be updated to reflect accurate lot coverage calculations.
- j) No portion of the porch within the waterfront setback shall be enclosed.
- k) Obtain for review and approval by the Land Use Office, current DES approval for the plan dated February 14, 2025.
- l) The Applicant for itself, its successors, signs and grantees, irrevocably releases any claims the Applicant might have or may have to any right to maintain or construct a second dwelling unit on the lot.

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 April 16, 2025, 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 four (4) in favor (Sperry, Jakobsen, Mills and McDonough), zero (0) opposed, and one (1) abstention (Stephens).

The decision made to grant the variance on April 2, 2025, 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 Mills
Vice Chairman

cc. Jeff Blackwell – Building Inspector (by email only at jblackwell@moultonboroughnh.gov)
Ethan Wood- Attorney (by email only at ewood@nco-law.com)
Map Lot Document File