



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance

Paul and Cynthia Smith/ Map 114, Lot 29

February 21, 2013

Applicant: Paul and Cynthia Smith
PO Box 336
West Groton, MA 01472

Location: Red Hill Road, Moultonborough, NH (Tax Map 114, Lot 29)

On February 6, 2013, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Paul and Cynthia Smith (hereinafter referred to as the "Applicants" and/or "Owners") for a variance from Article VI, C to allow for the commercial operation (non-residential use) of storing boats and personal equipment belonging to them and potentially others on their vacant parcel located in the Residential Agricultural (RA) Zoning District.

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

- 1) The property is located on Red Hill Road (Tax Map 114, Lot 29). No address has been assigned as there is no dwelling on the lot.
- 2) The applicants are the owners of record for the lot.
- 3) The applicants were represented at the Public Hearings by Jeremy D. Eggleton, Esquire.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District.
- 5) The applicants are proposing to allow for the commercial operation (non-residential use) of storing boats and personal equipment belonging to them and potentially others on the lot.
- 6) A variance is required for this proposal because non-residential uses are specifically not allowed in the RA district, nor is the specific use of boat storage included in the Table of allowed uses in the Zoning Ordinance.

- 7) The ZBA voted 5-0 to conduct a Site Visit and continued the Public Hearing to the Site Visit on February 8, 2013.
- 8) The ZBA conducted a Site Visit on February 8, 2013 and continued the Public Hearing to the regular meeting date of February 20, 2013.
- 9) Members of the public and direct abutters spoke against the Variance request.
- 10) Granting the Variance would be contrary to the public interest as the Board discussed the issue of winterizing/spring commissioning work possibly affecting the quality of life of neighbors and of water quality. The neighborhood is not compatible with the proposed use and there were concerns over access and safety on the adjacent roadway.
- 11) Granting the Variance is not consistent with the spirit of the Ordinance as the general welfare, health and safety of the neighborhood may not be provided for if the request is granted given questions about blocking the road with trucks/trailers, winterization/spring commissioning and shrink wrapping, security concerns and views.
- 12) By granting the Variance, substantial justice is not done because the owner suffers no loss in allowed uses on the vacant parcel in addition to the fact that the Board found that the proposed use is not consistent with the neighborhood's present use..
- 13) Granting the Variance may diminish the value of surrounding properties was the finding of the Board. While there was no expert testimony given to support whether the surrounding properties would or would not have their values diminished, the Board felt that this use could have that effect since this would be the only non-residential use in the neighborhood.
- 14) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision was not agreed to as a finding by the Board. The Board found that the applicant has reasonable use of the vacant parcel, either as a place to conduct a customary and incidental accessory use to his use of his nearby residential property or as a future residential parcel. Additionally, the Board found that there were no special conditions of the land that rendered the proposed use as a reasonable one.
- 15) On February 20, 2013, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, Bickford, Crowe, King) and none (0) opposed, to Deny the request for a variance and to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision to Grant the Variance, to be reviewed for accuracy by the Board at the March 6, 2013 Regular Meeting. The applicant's representative was informed by the Chair that the appeal period of 30 days would begin the day after the Board's decision on February 20, 2013.

The Board of Adjustment, on March 6, 2013, approved by a vote of five (5) in favor (Nolin, Bickford, Crowe, King, Hopkins) and none (0) opposed, this formal Notice of Decision and authorized the Vice-Chairman to sign the Notice of Decision and send to the applicant and place same in the case file.

The decision made to Deny the variance on February 20, 2013 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.



Russell Nolin
Vice-Chairman, Zoning Board of Adjustment

Date 3/2/13