



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Variance from Section 3.2.2.3 & 3.2.2.4

Timothy & Michelle Curran

Tax Map 129, Lot 86

October 4, 2023

Applicant: Timothy & Michelle Curran
150 Channel Center St. #502
Boston, MA 02210

Location: 244 Castle Shore Road (Tax Map 129, Lot 86)

On October 4, 2023, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Timothy & Michelle Curran (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 Timothy & Michelle Curran, for a parcel located at 244 Castle Shore Road, Tax Map 129 Lot 86. The applicants propose to remove an existing non-conforming house & deck and reconstruct a new more conforming house & deck to be located no closer than 9’6” from the side boundary line where 20-ft is required and 39’9” 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 3.2.2.3 (20-foot side setback) is not required on the easterly side, as the proposed building footprint occupies existing nonconforming area, with the exception of a bulkhead occupying approximately 30 square feet. The bulkhead does not come within 10 feet of the property line. According to the calculations provided in the applicant’s Exhibit B, 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 244 Castle Shore Road (Tax Map 129, Lot 86).
- 2) Timothy & Michelle Curran are the owners of record for the lot.
- 3) The lot is in the Residential Agricultural (R/A) Zoning District, partially within the Floodplain.
- 4) Attorney Christopher Boldt of Donahue Tucker & Ciandella, PLLC represented the Applicants.

- 5) The proposal is to remove an existing non-conforming house & deck and reconstruct a new more conforming house & deck to be located no closer than 39'9" from the lake where 50-ft is required.
- 6) The Applicant has received a NH DES Shoreland Impact Permit #2023-01888.
- 7) The Impervious Surface Percentage Approved by DES is 19.23%.
- 8) One member of the Conservation Commission provided written comments noting the concerns of the Commission.
- 9) Granting the Variance would not be contrary to the public interest as there currently is a deck on the existing home and it does not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public as all structures are close in this neighborhood and it does not change.
- 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 there currently is an existing deck and granting the variance will not change anything.
- 13) There is not a fair and substantial relationship between the general public purpose of the ordinance provisions and the specific application of that provision to the property because had the then owner applied for a variance when the deck was built using the states allowance of a 12-ft deck in the setback, the then board would more than likely approved that request, therefore it would be a unreasonable hardship to deny the current request, and the proposed use is reasonable as the deck already exists.

On October 4, 2023, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Mills, McDonough, Jakobsen, Hopkins, Stephens) and none (0) opposed to grant the request for the variance from Sections 3.2.2.3 for Timothy & Michelle Curran, Tax Map 129, Lot 86 to remove an existing non-conforming house & deck and reconstruct a new more conforming house & deck to be located no closer than 39'9" from the lake where 50-ft is required, 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. All conditions of such permits shall be perpetually complied with, and all necessary inspections shall be successfully completed prior to use.
- 3) An approved building permit must be obtained prior to commencing construction and all necessary inspections shall be successfully completed prior to use.
- 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 10/4/2025 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 November 15, 2023, 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 (Mills, McDonough, Jakobsen, Stephens), none (0) opposed, and one (1) abstention (Poloian).

The decision made to grant the variance on October 4, 2023, 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, reading "Robert H. Stephens", is written over a horizontal line.

Robert H. Stephens
Chairman, Zoning Board of Adjustment

cc. Scott Dvorak – Building Inspector (by email only at sdvorak@moultonboroughnh.gov)
Christopher Boldt, Esq. (by email only at cboldt@dtclawyers.com)
Map Lot Document File