

DEERING ZONING BOARD OF ADJUSTMENT

762 Deering Center Road
Deering, N.H. 03244

NOTICE OF DECISION

Case No.: 2020-04

You are hereby notified that following public hearings on November 17, 2020, the request by Greg Sereni (“Applicant”) for a special exception pursuant to Section 4.1.4 (c) of the Deering Zoning Ordinance (“Ordinance”) was **GRANTED** by the Deering Zoning Board of Adjustment (“Board”) by a vote of 4-0.

The property in question is located at 22 Cake Road, Tax Map 226, Lot 002 (“Property”), and is located in the agricultural/residential. The Applicant seeks a special exception to permit construction of a pole barn set back 29 feet from the rear lot line, whereas 40 feet is required (“Special Exception”).

The Special Exception is granted subject to the following conditions:

1. All development shall conform to the dimensions, construction sequence, equipment and material specifications shown on the latest version of any plan or plans submitted by, or on behalf of, the Applicant.
2. All representations made by, or on behalf of, the Applicant shall be deemed to be conditions of the approval.
3. Applicant shall obtain all other necessary permits prior to continuing construction.
4. The pole barn shall not be utilized for residential purposes.

In support of this decision, the Board has made the following findings of fact:

1. The Board previously denied a variance for the same project following public hearings held on August 27, 2020 and on September 22, 2020. *See* Notice of Decision Case No. 2020-02. The Board took official notice of those proceedings and the prior evidence, which is herein incorporated by reference.
2. Abutters Roger Treadwell and Crystal Treadwell appeared in support to the Application.
3. The Applicant proposes to construct a 24’ x 24’ pole barn that is set back 29 feet from the Property’s rear lot line, whereas 40 feet is required.

4. Subsequent to the Board's hearing on September 22, 2020, the Applicant continued construction notwithstanding the fact that he has received a cease and desist order from the Building Inspector and the Board had denied the prior variance request.

In support of this decision, the Board has made the following findings of fact and conclusions of law:

1. The Board found that the proposed pole barn was a reasonable use and satisfied the criteria for a special exception pursuant to Ordinance Section 4.1.4 (c).
2. The Board discussed whether or not the proposed structure was "small" within the meaning of Ordinance Section 4.1.4 (c). The consensus of the Board was that whether or not the size of the structure would satisfy this requirement depends on the specific proposal, the subject property, and the surrounding neighborhood. In this case, the Board concluded that the proposed structure was small based on the foregoing factors.
3. Based on the above, the Board granted the special exception by a vote of 4-0.
4. The Board did state for the record that the Applicant had violated the Ordinance. Specifically, the Applicant commenced construction without a building permit and was ordered by the Building Inspector to cease and desist construction. The Applicant was advised by the Building Inspector to file an application for a special exception, which he did not do, instead filing for a variance. The Applicant did not show up at the first meeting of the Board. Prior to the second meeting, the Board requested Staff to advise the Applicant that he amend his application to request a special exception per the recommendation of the Building Inspector, which he did not do. Following the Board's denial of the requested variance, the Applicant continued construction, notwithstanding the Building Inspector's cease and desist order, and the Board's denial of the variance. The Board concluded that these actions by the Applicant constituted a violation of the Ordinance.

Dated: November 23, 2020

/s/ David E. LeFevre
Chairman, Zoning Board of Adjustment

Note: Any party or any person directly affected by the Board's decision has a right to appeal. Anyone wishing to appeal must act within thirty (30) days of the date the Board's vote was taken. The necessary first step, before any appeal may be taken to the courts, is to file a motion for a rehearing with the Zoning Board of Adjustment. The motion must set forth all of the grounds upon which the appeal will be based. See New Hampshire Revised Statutes, Chapter 677 for details.