

Mr. Stephens asked that the Board determine whether this development, as revised, has the potential of Regional Impact and take a vote on that determination. Mr. Stephens polled the Board asking members if they felt that this project, as revised, for Stephen C. Francis (132-9) would have any potential for Regional Impact? Mike – No; Nick – No; Anni – No; Sean – No; Bob – No.

Mr. Mills referred to the Planners August 9, 2023, staff memo relating to lot coverage. The sketch providing indicated that they were over the 20%, and he asked if the gravel driveway was taken into consideration with the calculations provided showing 22%.

Mr. Sassan commented that if the driveway was not taken into consideration, that it would have to be accounted for. If the lot coverage exceeds 20%, and is an increase from what it was before, they would require planting to meet the minimum points score. If it exceeds 30% coverage, the applicant would need to come back to the Board if they wish to proceed.

Mr. Francis reviewed the figures they provided for lot coverage. He was not aware that the gravel driveway needed to be included in the coverage. A brief discussion ensued regarding coverage, what was or was not considered coverage, and what options there were for driveways, such as permeable pavers, permeable asphalt, etc. Mr. Francis stated that he had met with his neighbors (Daniels) and worked on the proposal, and he agreed that he would use a permeable surface, using crushed rock. Mr. Stephens noted they would need to find what would meet the standard with regards to New Hampshire Department of Environmental Services (NHDES). Mr. Sassan noted that the Code Enforcement Officer will review the coverage issue as part of the review of the building permit application. If the coverage exceeds 30%, they will need to seek relief from the Board for a variance from the section of the ordinance. If they stay at the same coverage as existing, it will require impervious area to maintain that same coverage. If they increase from 22%, they will need to plant to reach the point score in the shorefront.

Mr. Poloian questioned if there was any change to the existing septic? Mr. Francis stated there is no change at all. This was another reason why the driveway is to remain gravel was for access to the septic line that runs from the septic tank to the leaching field.

Mr. Stephens opened the hearing for public input.

Max Hoene, member of the Conservation Commission was present representing the Commission reading the following into the record: The Conservation Commission has the following concerns:

- The driveway has recently been extended at the front of the lot to accommodate a boat trailer. This needs to be detailed in the proposed plan. The site plan should also show proposed driveway configuration.
- There is a risk that the proposed building infringes on the existing septic tank and/or leach field. Given that the septic and leach field are so close to the proposed building foundation, the Conservation Commission suggests that the as-built septic tank and leach field locations be verified by a surveyor before a building permit is issued.
- The proposed building encroaches into the 20' setback, with increased impervious surfaces and may cause more erosion on this already steep terrain.
- The proposed building will increase the volume and peak flow of stormwater runoff on to the abutters land which already has issues with stormwater. Given the terrain of the site the stormwater has no place to flow but from Francis' land onto the neighbor's land next door.
- The Conservation Commission recommends that an engineered stormwater management plan be implemented and maintained which is designed to infiltrate increased stormwater runoff from the proposed building and paved surfaces to ensure runoff stays within the boundaries of the owner's parcel.

Doug Daniels – 98 Toltec Point Road. Mr. Daniels thanked the Francis' for redesigning the garage, adding it is very appropriate as to how it is lying on the land. Mr. Daniels reiterated their concerns with the water and water mitigation, requesting there be a water mitigation plan. The natural flow of the water goes into their driveway, and front door. They would like to make certain that there is no additional water that flows down and minimize the amount of potential damage that would be done to their home. They have requested a reinforced water mitigation plan in place, prior to approving any construction.

Mr. Sassan referred to his August 9, 2023, staff memo in which he noted that the comments in his memo had largely been addressed. He mentioned that there have been two side setbacks identified and recommended that the board may want to break them out and make separate motions unless you feel the rational is the same for both.

Mr. Sassan commented that at the June 7th meeting a motion was made by Mr. Mills, and it asked for four things, the evaluation of the life safety access, the lot coverage calculations, a site plan and water mitigation plan, and a Plan from a professional in the building trade as to how they are going to execute construction without encroaching on the abutting properties. In the view of the Land Use Office, this request is now becoming much more common and more like other applications where such things are not required. The applicant has satisfied some of these. They provided the impervious coverage calculations, which will be reviewed, as well as additional plans and information. It seems that the other items might not still be requirements of the board.

Anne Daniels - 98 Toltec Point Road. Ms. Daniels noted there is a guttering system on the front of the Francis home. She noted the proposed garage is attached to the front of the home and has a dormer. The runoff currently sheds to the south, asking what will happen now with the new dormer. She noted her concerns with water runoff during the winter causing ice issues on their driveway.

Mr. DeMeo asked if the Board could require the water mitigation include the existing building. Members discussed this briefly with some feeling they could make this a condition if they choose.

The Chairman asked if there were any additional questions from the board. It was noted that there were none. The board went into deliberative session to discuss each of the criteria at 7:27 PM and came out at 7:37 PM.

During the deliberative session members discussed each of the criteria for the granting of a variance. They agreed that granting the variance would not be contrary to the public interest as the proposed construction will not alter the essential character of the neighborhood and the garage will not cause overcrowding as the setback was substantially preserved. For the same reasons as referenced for the first criteria the variance observes the spirit of the Ordinance. Substantial justice would be done as there is no public benefit to be gained by requiring the garage to be constructed in a conforming location, while the loss to the applicant would be great. The proposed use will not diminish surrounding property values providing the stormwater runoff does not become an issue in the future, it will not cause any overcrowding or change in the character of the neighborhood, it is a reasonable use and will be new construction adding value to the property. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as special conditions of the Property distinguishes it from other properties in the area due to the shape of the lot, the existing conditions of the location of the dwelling and septic system, and the purpose of the setback was substantially being preserved. The proposed use is for a garage on a residential lot and is a reasonable use in New Hampshire. The Board determined that due to these unique conditions, a variance is necessary to enable the reasonable use of the property.

Members discussed possible conditions for approval if they decided to approve the variance, including the recommended conditions as outlined in Mr. Sassan's staff memo. These included any necessary NHDES Shoreland Permit, addressing a water runoff design. The water mitigation could be a design either on the shoreland permit drawing or alternatively independent of that. Members preferred it to be independent, a water mitigation design covering all the effects of the new construction. It was evident that the one motion is intended to apply to both requests.

There was no further input from the Board, Applicant, or the public. The voting members were Mike, Nick, Anni, Sean, and Bob.

MOTION: Mr. DeMeo made the motion to grant the request for a variance from Article 3.2.2.3 for Stephen C. Francis, Tax Map 132, Lot 9 to allow for the construction of an attached garaged, to be located 17.5 feet (at its closest point) from the northerly side boundary line where 20 ft. is required and 9.3 feet (at its closest point) from the southerly side boundary line where 20-ft is required, subject to the following conditions: 1) Garage and roof overhang 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, NHDES Shoreland approval and septic approval. All conditions of such permits shall be perpetually complied with, and all necessary inspections shall be successfully completed prior to use. 3) 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. 4) Garage shall only be used as accessory to the existing single-family use. Any future changes to the structure or its use shall be subject to required approvals. 5) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval. 6) The applicant and owner are solely responsible for complying with the conditions of approval. 7) Per RSA 674:33, approval expires on 8/16/2025 if use is not substantially acted on. 8) Water mitigation shall be incorporated, with a plan separately listing water mitigation from the structures to include any effects due to the new construction, and further to close the public hearing and to direct staff to draft a formal Notice of Decision for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only and signed by the Chair at their next meeting. Mr. Poloian Seconded.

Discussion on motion. Members suggested amending the conditions of approval as made by Mr. DeMeo. After a brief discussion, members agreed to amend conditions 4 and 8 to the following:

4. Garage shall only be used as accessory to the existing single-family use. Any future changes to the structure or its use shall be subject to required approvals. No bedrooms shall be added without notification to the Land Use Office.
8. An engineered water mitigation plan shall be provided prior to issuance of building permit addressing all areas impacted by the new construction.

MOTION: Mr. Mills made the motion to approve the amendments as noted above. Mr. DeMeo Seconded. The Motion carried four (4) in favor (Mills, DeMeo, Poloian, Stephens), and one (1) opposed (Jakobsen).

Mr. Stephens noted the right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

Mr. McDonough returned to the board at this time with full voting privileges.

VI. Correspondence: - None.

VII. Unfinished Business:

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for August 2, 2023, granting of a Variance for Briand T. & Barbara J. Levasseur for a parcel located on Leisure Drive (Tax Map 98, Lot 93).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on August 2, 2023. There were no changes made to the document.

MOTION: Mr. McDonough made the motion to approve the formal Notice of Decision as written for Briand T. & Barbara J. Levasseur for a parcel located on Leisure Drive (Tax Map 173, Lot 20), and staff to mail said notice to the applicant or applicant's agent. Ms. Jakobsen seconded. The Motion carried four (4) in favor (Mills, McDonough, Jakobsen, Stephens), none (0) opposed, and one (1) abstention (Poloian).

2. Mr. Stephens informed the Members that they have been served on the Koss project, and that Mr. Sassan had prepared a brief memo regarding the summons. This matter is considered an active case, noting that members cannot talk about the case in public, note their own opinions, or talk amongst themselves. If the appellants are successful, the case could be remanded back to the Board, and the Board would be required to adjudicate it. If members have shared their opinions, it would then only be right for them to recuse themselves from the hearing. Members were reminded not to discuss this case.

3. Mr. Stephens noted that there were no new submissions or continued hearings for the September 6th meeting date, therefore he cancelled the Zoning Boards regularly scheduled meeting of September 6, 2023.

VII. Adjournment: Mr. Stephens made the motion to adjourn. Mr. McDonough Seconded. The Motion carried Unanimously, and the Board adjourned at 7:58 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

NOTICE: These DRAFT Minutes have not been formally approved by the Zoning Board of Adjustment. Please contact the Land Use Department after the next meeting of the Moultonborough Zoning Board to learn if any corrections, additions, or deletions were made.