

**Moultonborough Zoning Board of Adjustment**  
**P.O. Box 139**  
**Moultonborough, NH 03254**

**Public Meeting**

**April 5, 2023**

**Minutes**

Present:           Members:       Bob Stephens, Robert St. Peter, Nick DeMeo, Sean Poloian  
                          Alternate:       David McDonough  
Excused:           Member:         Michael Mills  
                          Alternates:     Jerry Hopkins, Steve Buy  
Staff Present:       Bonnie L. Whitney, Administrative Assistant

**I.     Call to Order:** Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced the members of the Board to the public. Mr. Stephens appointed David McDonough to sit on the Board with full voting privileges in place of member Michael Mills.

**II.    Pledge of Allegiance**

**III.   Review/Approval of Minutes: 02/15/23**

**Motion:** Mr. Poloian made the motion to approve the March 15, 2023, minutes as written. Mr. St. Peter Seconded. The Motion carried with Mr. McDonough abstaining.

**IV.   Hearings:**

1.     Continuation of Public Hearing for Shore Realty Trust, Chester R. Dzioba Trustee (162-19) (46 Orton Lane) - Variance from Section 3.2.2.3

Daniel Muller, Jr., Esquire from Cronin, Bisson & Zalinsky, P.C. was present for the hearing this evening on behalf of Shore Realty Trust. Chester Dzioba, Trustee, who was present this evening. Also present for the hearing was Joseph Maynard from Benchmark Engineering, Inc., who is the engineer on this case. Mr. Muller stated that this was a continued hearing for a setback variance.

Mr. Muller noted the request is for a setback variance. He briefly recapped what had already been discussed at the prior meeting. He noted the previous questions raised about the proposed addition; whether it could be moved further away or connected to the existing house, whether it could be moved at all. There were questions about the view from the neighboring property. Since that meeting there have been some changes made to the plan in an effort to address some of the issues. The structure has been moved two feet further away from the property line, as was briefly discussed with the board at the last meeting.

Mr. Muller spoke to the question regarding the potential to connect the garage to the existing home. He referred to the revised plan, pointing out that there were some practical difficulties that would occur. These included 1) there are two water lines of concern, one that would be under the building if it were connected. 2) Along that same line, the home owner heats with oil, and the oil company relies upon the area that would be between the garage and dwelling to access the oil fill. 3) In terms of entrance, most people enter on that end of the property, making some practical difficulties if you were going to connect the buildings. Mr. Muller reiterated that the proposed garage has been moved over two feet. There is a reduction in the square footage from the last proposal, which was 285 sq. ft. The revised proposal is now 205 sq. ft. in an effort to reduce the impact.

In addition to providing a revised plan, the applicant provided several photos taken from the property which show what you look out onto. There was a question at the last meeting about the view from the abutting property. He pointed out in Photo G, the fence between the two properties. Photo D shows the current building on the neighboring house has no windows. Mr. Muller noted another constraint in moving the location of the proposed garage back, included an electrical service.

Mr. Muller stated that there has been an effort made to move the proposed garage away from the property line, with some reduction in size of nonconformity, and a series of photos that were submitted to give a better idea as to what is in between the two properties. Mr. Muller stated he would answer any questions from the board.

Members had questions regarding the revised setback, which was indicated that the proposal is for the garage foundation to be 14 feet from the property line. It was noted that the abutters building does not have any windows along the side facing the applicant's property and is located approximately 6 feet from the setback.

Discussion ensued regarding the non-conforming square footage of the existing shed, what expansion rights that is allowable by the zoning ordinance and what the square footage of intrusion was for the proposed garage. After calculating those factors, it was noted that there was approximately 144 sq ft of existing non conformity, which can be expanded by 20%, allowing approximately 172 sq. ft. by right. The applicant is requesting 205 sq. ft, a difference of 33 sq. ft. more than allowable. It was pointed out that the length of the proposed garage along the sideline was 35' 6". If the applicant were to reduce the width of the garage by less than one foot, they would not need a variance at all. They could meet the 20% expansion allowed by right.

Chairman Stephens opened the public hearing for public input and noted there was none.

After conferring with his client, Attorney Muller indicated that they got the sense of the board and stated they would withdraw the application without prejudice.

**MOTION:** Mr. DeMeo made the motion to accept the withdrawal, without prejudice, for the variance application for Shore Realty Trust, Chester R. Dzioba Trustee, Tax Map 162 Lot 19. Mr. Poloian Seconded. The Motion carried unanimously.

2. Christopher & Deirdre Maroun (135-7) (376 Whittier Highway)  
Limited Special Exception/Temporary Use Permit – Section 11.3

Mr. Stephens indicated that he would be stepping down from the board for the hearing for Christopher & Deirdre Maroun, leaving on a board of four members, and that the applicant is entitled to a full board of five members. Mr. Maroun stated that he did not have an issue with Mr. Stephens remaining on the board for his application. Mr. Stephens stepped down from the Board for this hearing, and Mr. Maroun agreed to proceed with a board of four. Vice-Chairman St. Peter conducted the hearing for Christopher & Deirdre Maroun.

Chris Maroun presented the application for a Limited Special Exception/Temporary Use Permit to allow Maroun Landscaping to temporarily use a small portion (approximately 3,500 sq. ft.) of the property located at 376 Whittier Highway for office space for the purpose of dispatching landscaping crews in the early mornings. He noted that the employees would arrive between 5am and 6am and would leave the property between 7am and 7:30 am, returning in the late evenings, between 5pm and 8pm. He explained that there will be approximately 30-35 landscaping crews consisting of an average of 2 employees per crew. The crews will be dispatched from the location Monday through Saturday with some limited activities on Sundays. Mr. Maroun requested the temporary permit for a term of one year. They are currently in the process of preparing an application for the land use boards to construct a new building on their abutting lot(s).

Mr. Maroun stated that there will be no onsite storage of landscape materials or equipment. They are proposing parking for 39 vehicles overnight in the front and to the side of the building. The crew members use the company vehicles to come to work and during the day they're out on the job sites.

The site will be accessed from the existing Route 25/Whittier Highway curb cut. They are currently having discussions with DOT to review the current permitting of the curb cut and to apply for an amendment to the existing permit for this use.

Members questioned if they will be accessing the site from Playground Drive. Mr. Maroun stated for the record that there would be no exit onto Playground Drive. Absolutely no access to Playground Drive.

Members questioned if there will be any site lighting. Mr. Maroun noted there are no proposed changes to the lighting at this time, nor any structural changes to the building. There will be no parking of equipment at the site, other than the pickup trucks used by the landscapers. It will be used for office space only for the dispatching of the landscaping crews. Members questioned the type of vehicles that would be onsite. Mr. Maroun stated that they would be pickup trucks and trucks equivalent to an F-550.

Mr. St. Peter asked that the Board first determine whether this development has the potential of Regional Impact and take a vote on that determination. Mr. St. Peter polled the Board by roll call vote asking each if they felt that this project for the Maroun's (135-7) would have any potential for Regional Impact? Roll call: David – No; Nick – No; Sean – No; Rob – No.

Mr. St. Peter opened the public hearing for public input, noting there was none.

Mr. St. Peter asked if there were any additional questions from the board. Hearing none, the board went into deliberative session to discuss each of the criteria for the granting of a Limited Special Exception/Temporary Use Permit at 7:41 PM and came out of deliberative session at 7:44 PM.

During deliberative session members discussed the criteria for a limited special exception for temporary use (Section 11.3) beginning with the first criteria that the specific site is an appropriate location for the use. Members agreed that the location was appropriate as the site is located in the commercial zone, and the use is a commercial activity. They agreed that the use was compatible with the character of the neighboring land uses as it is surrounded by businesses and is located in the commercial zone. Property values in the surrounding area will not be negatively impacted or reduced by such a use as it is a commercial use in a commercial zone, and the activities as proposed will not impact values. There will be no nuisance or serious hazard to vehicles or pedestrians from any activity generated from the site as they are using Whittier Highway for access and egress and the applicant stated that they will not be using Playground Drive for access or egress. The hours they have stated are early in the morning before most people are out and about and return after a majority of people are done commuting from work. The capacity of the existing roads and highways to carry related traffic shall be adequate as it is located directly on Route 25.

There was no further input from the Board. The voting members were David, Nick, Sean, and Rob.

**MOTION:** Mr. DeMeo made the motion to grant the request for a Limited Special Exception/Temporary Use Permit for Christopher & Deirdre Maroun, Tax Map 135 Lot 7, subject to the following conditions: 1) Restricting the use to a maximum of 39 vehicles on site for the purposes of dispatching workers; 2) Restrict any access to Playground Drive; 3) Project shall obtain necessary state and local permits, and all conditions of such permits shall be complied with; 4) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval; 5) Any improvements, expansions, or changes to the property, including, but not limited to signage or lighting, shall require site plan approval; 6) Per Section 11.3, the limited special exception/temporary use will expire on 4/5/2024 and may be renewed upon reapplication to the zoning board of adjustment. Such occupancy and use shall be of a temporary nature,

with no expectation of becoming permanent, 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. The Motion carried Unanimously.

Mr. St. Peter noted the 30-day right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

Mr. Stephens returned to the Board at this time.

3. Big Dog Holdings, LLC (18- 37, 39 & 40) (Whittier Highway)  
Special Exception Section 6.5

David Frothingham, Civil Engineer, from Wilcox & Barton, Inc. was present representing the applicant Big Dog Holdings, LLC. Richard Annaian and John Annaian were present in the audience for the hearing.

Mr. Frothingham gave a brief overview of the properties that are located on Whittier Highway, which are currently two existing parcels of record. The proposed use is for a bulk fuel plant including three 15,000 gallon underground storage tanks, an adjacent fuel loading shed with transfer equipment, an above ground 30,000 gallon propane tank, a proposed 4,992 sf garage building with an attached 1,920 sf office building and associated parking and utilities.

The site is accessed from Whittier Highway through two existing curb cuts. As part of the subdivision that created the lots, each lot has a shared curb cut with an adjacent lot. Both cuts are shared with a commercial lot. Mr. Frothingham stated that the traffic will be two-way through the site for business vehicles and employees. Any customer that visits the site will use the southern [sic] access only and access the office on the south end of the building. The area of the building where the fuel tanks are located will be fenced in and not open to the public.

The business trucks that deliver fuel to homes can access the site from either curb cut. Bulk fuel deliveries will only access the site from the south, and out to the north. The facility is located in the center of the site. Across the front there is an existing woods area that will remain uncut, with the exception of grading required to build the driveways. To the rear of the site they have proposed an uncut 50-ft buffer to the lots to the rear and south. There will be an area for the stormwater pond which will be fenced in and has screening for the commercial lot to the north.

Mr. Frothingham stated that they have stormwater controls for the entire site. The square footage of the building does not require a sprinkler system. He noted there is a pond onsite to provide water for firefighting. The building and tanks will conform with all fire codes.

This type of facility is a low generator of traffic. There will be approximately one fuel delivery a day to the site during high heating season, and the trucks that deliver to the residences will make one or two trips a day. Employees and office personnel will arrive in the morning. Drivers will leave for deliveries, and a few customers daily. Trucks will return in the evening and drivers and office personnel will leave. The office hours will be 8AM – 5 PM. During the winter season fuel drivers arrive between 5AM and 7AM. Bulk deliveries will be made generally during the day.

Mr. Poloian questioned if there will be trucks stored on the site. Mr. Annaian expects he will have 3-5 drivers. The delivery trucks will be stored on site. The oil trucks will be stored inside the building. The propane delivery trucks will be stored outside the building. Mr. Poloian questioned what time the tractor trailer deliveries would be made. Mr. Annaian noted that it usually would be between 7AM-4PM. Mr. St. Peter questioned if there would be any refilling of propane cylinders for the public? There is no intention at this time.

Members questioned if they had been before the planning board. It was noted that the applications for the zoning board and planning board were filed concurrently and that they are scheduled for a hearing with the planning board next week (4/12/23).

Mr. Stephens asked that the Board first determine whether this development has the potential of Regional Impact and take a vote on that determination. Mr. Stephens polled the Board by roll call vote asking each if they felt that this project for Big Dog Holdings, LLC (18-37, 38 & 39) would have any potential for Regional Impact? Sean and Rob questioned the radius that should be taken into consideration for regional impact, noting the Sandwich Town Line was only one mile away. Roll call: David – No; Nick – No; Sean – Yes; Rob – Yes; Bob – No. Based on a 3 to 2 vote, no regional impact was determined.

Mr. Stephens referred to the Interim Planners staff memo prepared March 30, 2023, specifically the Application Complete & Noticed as Required.

6.6.3 Lot Coverage. “...the coverage of any lot, by buildings, inventory and equipment, storage areas, parking and driveway area and any impervious surfaces, shall not exceed 50 percent of the lot...”. The plan set does not provide information on the proposed lot coverage. The Stormwater Management Plan does state that “construction will create approximately 40,301 square feet of new impervious cover” which would be about 33% impervious coverage. However, this figure may not be the same as lot coverage.

Mr. Frothingham noted that lots 39 and 40 are to be merged as part of the overall site plan, and Lot 37 will remain as a standalone lot. They will grant an easement for the required 50-ft buffer on the lot(s) to be developed. Members questioned if the lots are required to be merged prior to approval. It was noted that the merger of the lots would be necessary for site plan approval. Al Hoch, Planning Board Chair was present, noting the merger could be a condition of approval.

Chairman Stephens opened the public hearing for public input.

Brian Sanford – Chairman, Moultonborough Conservation Commission. Mr. Sanford provided written comments from the Conservation Commission (Con Com). He stated in looking at the application they prepared the comments as follows: Section 6.5 of the Zoning Ordinance asks whether the site is appropriate for the intended use. This was answered by the applicant in the context of the presence of other businesses. We believe another important aspect of the appropriateness of the site in this case is the context of the potential impact of the proposed use, at this site, on our environment. Identified in the Source Protection Plan for Moultonborough NH dated September 2016 (Attached), Underground storage tanks are identified as one of the most common causes of ground water contamination in the state of NH, along with mishandling of industrial chemicals, and stormwater runoff. The report further states that “Land uses associated with gasoline release to the ground are therefore of concern.”

The proposed project is in close proximity to the Halfway Brook stratified drift aquifer (See attached GIS map – Moultonborough NHI 2007 Water Resources Map). This aquifer and the Shannon Brook aquifer supply private wells and many of the public water systems in Moultonborough. A breach in the underground fuel storage system or significant spill at the proposed site could pose a significant contamination risk to the aquifer, a form of risk that our Groundwater Protection Ordinance was designed to prevent.

Prior to rendering a decision to grant the special exemption [sic] for the proposed site, additional due diligence is recommended to understand the geology and hydrology of the site relative to the potential for ground water contamination risk posed by an unexpected storage system breach, spill and storm water runoff from the site. This assessment should be conducted by experts in these fields and the findings presented to ZBA.

Mr. Frothingham replied the site is near the aquifer protection district, but it is not within it. The studies that define the aquifers are detailed and carefully thought out. Yes, they are putting fuel underground. It will be in double walled fiberglass tanks that are continuously monitored. All fuel transfers

are tight fit connections. The changes of the tanks leaking are very low. The instances you hear of tanks leaking are the old steel tanks that are corroded and have been in the ground for 50 years. The new tanks are tested annually. They are not putting gasoline in the ground, it is kerosene and diesel fuel. He noted that DES has to approve the site as well as the tanks. There is an oil compliance & plan review conducted by NH DES. There is a monitoring system in place for the notification should there be an extreme case where there is a leak.

Discussion ensued regarding the tanks, containment for the tanks, and preventative measures in the event of a leak or spill. Mr. Sanford commented that failures do periodically happen and why would the board create a risk so close to the aquifer? He urged the board to do their due diligence before granting the special exception. Mr. Frothingham noted that if someone wanted to put up a gas station on this site, it would be permitted by right in the ordinance. Mr. Annaian commented that he had previously owned the former 603 gas station/convenience store and there is 42,000 gallons of gasoline on that site which is directly across from Lake Kanasketka.

Members questioned if they had received input from the Fire Chief regarding the comment from the Interim Planner relating to Section 6.5.2.6 Input is needed from the Fire Chief and Emergency Management to confirm that the department has the capacity to respond to serve the use in the event of an emergency, and 6.5.2.9 Input is needed from the Fire Chief and Code Official to confirm that the proposed on-site fire protection facilities comply with current codes and requirements. Mr. Annaian commented that he had spoken with the Fire Chief regarding the project, and it was discussed at the TRC held in December. The board has requested written input from the Fire Chief.

Mr. Stephens identified each of the criteria for the granting of a special exception that the board must deal with regards to the application with discussion ensuing by the board.

- 1) A specific site is an appropriate location for the use or structure. The structures and activities contained on the site shall be screened from view on all sides by a vegetated buffer of not less than fifty (50) feet in width. (If the site is in the Residential/Agricultural Zone) Is this in an area that allows for this, which is why they are here by special exception and not by variance. It was noted that one of the permitted uses in this area is a gas station, and a gas station has buried tanks as well. DES regulations require there be 75' from separation from tanks to any drinking water well, and they are in excess of that from all the surrounding wells. They meet all the separation distances deemed appropriate by the state. They are providing a 50-ft vegetated buffer as required.*
- 2) The use shall be compatible with the character of the neighboring land uses. The site is located in Commercial Zone B.*
- 3) The property values in the surrounding area will not be negatively impacted or reduced by such a use. This is a subjective question and there has been no testimony to the alternative, noting again the site is located in Commercial Zone B.*
- 4) There will be no nuisance or serious hazard to vehicles or pedestrians from any activity generated from the site. There has been a presentation of the business activity in which they have indicated they have a plan in place for separation, isolating and keeping separate as well as providing safety protection.*
- 5) Adequate and appropriate facilities will be provided for the proper operation of the proposed use. There will be a monitoring system in place, access for the Fire Department, a pond onsite, and a cistern on the abutting property. They are required to receive NH DES approval for the site.*
- 6) The proposed use shall comply with the minimum land space requirements. The lots will be merged.*
- 7) The capacity of the existing roads and highways to carry related traffic shall be adequate. The site is located on Route 25/Whittier Highway.*
- 8) The site must have on-site fire protection facilities. As a condition of approval, the ZBA will require input from the Fire Chief that they meet any necessary fire code.*

Standards

- 1) Increasing the required lot size in order to protect the adjacent properties. N/A*
- 2) Limiting the lot coverage or height of buildings because of obstruction to view and/or reduction of light and air to adjacent properties. N/A*

- 3) *Control of location and number of vehicular access points to the property. Established and noted in presentation.*
- 4) *Limiting the number, location, and size of signs on site. Must meet the requirements of the Zoning Ordinance.*
- 5) *Requiring suitable onsite landscaping screening, and to maintain the property in a character in keeping with the surrounding area. Addressed by the Planning Board through Site Plan Review.*
- 6) *Provide specific layout of facilities on the property such as the location of building, parking spaces, and traffic patterns so as to minimize the effect on adjoining properties. This has been demonstrated during the presentation and testimony.*
- 7) *Require further that soil types and slopes be identified on an adequate plan. They have prepared an erosion control plan, stormwater treatment and management plan, and grading plan.*
- 8) *Require inspection of existing sewage disposal systems and certifications from professional engineers employed by the Town at the cost of the applicant to report upon the adequacy of the systems for their intended purpose. There will be an onsite septic system that must be approved by NH DES Subsurface.*

Mr. Sanford suggested that that board consider having a hydrologist review the proposed plan and assess if there were a spill or leakage from this tank facility, what would be the expected fate of the contamination plume and its movement towards the aquifer.

Mr. Stephens asked if there were any additional questions from the board. Hearing none, the board went into deliberative session to discuss each of the criteria for the granting of a Special Exception at 8:56 PM and came out of deliberative session at 9:04 PM.

During the deliberative session members discussed the criteria as previously noted. The site is an appropriate location for the use or structure as it is located in Commercial Zone B and a gas station is an allowable use. As noted in the presentation and on the plans, the structures and activities contained on the site will be screened from view on all sides by a vegetated buffer of not less than fifty (50) feet in width. The site is located in Commercial Zone B and there are other commercial uses that abut each side of the site; therefore, it shall be compatible with the character of the neighboring land uses. The property values in the surrounding area will not be negatively impacted or reduced by such a use noting there has been no evidence that there will be a negative impact on either the applicant or abutters. The site will be screened and fenced so there will be no nuisance or serious hazard to vehicles or pedestrians from any activity generated from the site. The applicant has stated that they will merge the two lots, providing adequate and appropriate facilities for the proper operation of the proposed use. The site will comply with the minimum land space requirements once merged. The site is located on Route 25, therefore the capacity of the existing roads and highways to carry related traffic shall be adequate. If the board should elect to approve the application Mr. Stephens requested there be a condition of approval, the ZBA will require written confirmation from the Fire Chief that the proposal onsite fire protection facilities comply with current codes and requirements.

There was no further input from the Board. The voting members were David, Nick, Sean, Rob, and Bob.

6.5.2.6 Input is needed from the Fire Chief and Emergency Management to confirm that the department has the capacity to respond to serve the use in the event of an emergency.

6.5.2.9 Input is needed from the Fire Chief and Code Official to confirm that the proposed on-site fire protection facilities comply with current codes and requirements.

**MOTION:** Mr. DeMeo made the motion to grant the request for a Special Exception for Big Dog Holdings, LLC, Tax Map 18 Lots 37, 39 & 40, subject to the following conditions: 1) The lots shall be merged to comply with Section 6.2.5.7, minimum land space requirements. 2) Written confirmation from the Fire Chief relating to Section 6.5.2.9 confirming that the proposal onsite fire protection facilities comply with

current codes and requirements, 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. McDonough Seconded. The Motion carried Unanimously.

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

**V. Correspondence:** - None

**VI. Unfinished Business:**

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the March 15, 2023, granting of a Variance from Section 3.2.2.1 (road setback) for Madeline S. Oka and Paul Oka for a parcel located at 63 Blackey Cove Road (Tax Map 168, Lot 2).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on March 15, 2023. There were no changes made to the document.

**MOTION:** Mr. DeMeo made the motion to approve the formal Notice of Decision as written for Madeline S. Oka and Paul Oka for a parcel located at 63 Blackey Cove Road on Tax Map 168 Lot 2, and staff to mail said notice to the applicant or applicant's agent. Mr. Poloian seconded. The Motion carried with Mr. McDonough abstaining.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the March 15, 2023, granting of a Variance from Section 3.2.2.3 (side setback) for Madeline S. Oka and Paul Oka for a parcel located at 63 Blackey Cove Road (Tax Map 168, Lot 2).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on March 15, 2023. There were no changes made to the document.

**MOTION:** Mr. DeMeo made the motion to approve the formal Notice of Decision as written for Madeline S. Oka and Paul Oka for a parcel located at 63 Blackey Cove Road on Tax Map 168 Lot 2, and staff to mail said notice to the applicant or applicant's agent. Mr. St. Peter seconded. The Motion carried with Mr. McDonough abstaining.

**VII. Adjournment:** Mr. St. Peter made the motion to adjourn. Mr. McDonough Seconded. The Motion carried Unanimously, and the Board adjourned at 9:10 PM.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant