



3. Mr. Stephens noted that the Board was in receipt of a Letter of Resignation submitted by Alternate Member Steve Buy. The Chair expressed his appreciation for Mr. Buy's service to the Town in serving on the Board. Staff will prepare a letter of appreciation to be sent to Mr. Buy.

**MOTION:** Mr. St. Peter made the motion to accept Mr. Buy's letter of resignation as an Alternate Member of the Zoning Board of Adjustment. Mr. Poloian Seconded. The Motion carried unanimously.

**Review of Policies and By-laws:** - See Item #3 under Section VII. Unfinished Business

**IV. Review/Approval of Minutes:** 11/16/22 and 04/19/23

As there was not a quorum of members present this evening that were in attendance for the meeting of November 16, 2022, the Board did not take up the approval of the draft minutes. They will be reviewed at the next meeting where there is a quorum of the members that were present on November 16, 2022.

**Motion:** Mr. St. Peter made the motion to approve the April 19, 2023, minutes as corrected. Mr. Poloian Seconded. The Motion carried unanimously.

**IV. Hearings:**

Alternate Member Mr. McDonough stepped down from the table for the Francis application.

1. Stephen C. Francis (132-9) (100 Toltec Point Road)  
Variance from Zoning Article 3.2.2.3

Stephen Francis presented his application for variance. Claire Wilkens, Architect, pllc for the project was present in the audience for the hearing. Mr. Francis referred to a plan prepared by Hambrook Land Surveying. He gave a brief overview of the property, noting that he was between a rock and a hard place. He has spoken with David Ames, Ames Associates who had indicated that there is no other location that he can relocate his septic system. The proposal is for the construction of a detached, oversized one car garage, approximately 760 sq. ft. The coverage of the new structure is approximately 1,000 sq. ft.

Mr. Francis stated the only place to locate the garage is in the side setback, which comes up the property line. The garage being proposed is an oversized one car garage, with an office on the second story. The garage is connected to the house by a covered breezeway. The septic tank is depicted on the plan in a location that will allow for the ability to access the tank. To minimize the size of the garage, they are proposing a covered exterior staircase leading down to the breezeway, which connects to the existing home.

Mr. Francis stated the lot is 14,031 sq. ft. and 30% of that is approximately 4,200 sq. ft. The existing structure is 1,755 sq. ft., the new footprint is 1,000 sq. ft., for a total of 2,755 sq. ft. which is under the allowable 30% coverage of the lot. Mr. Francis is requesting a variance from Section 3.2.2.3 to allow the garage to be located within the sideline setback. The foundation will be approximately 3-ft from the sideline at its closest point. There will be an overhang of 1 ½ feet.

Mr. Francis stated that they have not fully developed a plan for stormwater mitigation. A plan will be developed with guttering and ground drainage to make certain that the water runoff stays on the property.

Mr. Stephens noted the variance application plan submitted depicted a triangular area near the lake. In that area the abutting home is encroaching on the Francis property. Mr. Stephens questioned if that was an original lot line that extends to the point at the lake? Mr. Francis stated yes. It was his understanding that the lots were created in the 50's, having a fixed dimension to provide 125 feet of waterfront regardless of what the waterfront actually looked like. At one point the neighboring lot was developed, and then there was a survey that was going to cut the corner off Lot 9 (Francis Lot) and adjust it to Lot 10 (Daniels Lot), which never happened. There is a permanent easement granted to the Daniels Lot 10 for the encroachment.

Mr. Mills questioned if there was an elevation plan. Members were provided with an elevation plan prepared by Ms. Wilkens. Mr. Mills questioned if the septic system was being redone. Mr. Francis stated the system is staying exactly where it is, not touched. He noted that Mr. Ames had stated “if we touch that, it will open up a can of worms that neither one of us will survive.” Part of that is the well head is located well within the required 75’ well radius.

Mr. Mills noted the existing retaining wall was 3 or 4 feet in height, asking if the plan was to elevate everything to that height? Mr. Francis stated no. The plan is to substitute the foundation and have the foundation of the garage replace that section of the retaining wall. The walkway to the front door will go across the leaching field.

Mr. Mills commented that he had not seen in the application that the garage was to be two stories, with an office above, and asked if there was plumbing above? Mr. Francis stated that there will be a home office and no plumbing up there. There will be no change to the two bathrooms that are supported by the existing septic system.

Members viewed the plan set prepared by Claire Wilkens, which detailed the garage, including the dimensions of the garage, breezeway, and the interior dimension of the second floor.

Mr. Stephens asked that the Board 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 Mr. Francis (132-9) would have any potential for Regional Impact? Roll call: Mike – No; Sean – No; Anni – Yes; Rob – No; Bob – No.

There was a brief discussion as to this being a waterfront property, noting concerns of possible impact to the lake, therefore being regional impact. DES has already reviewed and issued the PBN for the project. It was noted that the applicant has received a NH DES Shoreland Permit by Notification (PBN 2023-00693) which was reviewed by DES. If you were to consider any lakefront property as having the potential for regional impact, would you be notifying all towns that have shore frontage?

Mr. Stephens opened the hearing for public input.

Steve King, member of the Conservation Commission was present representing the Commission. He read the following comments into the record: The Conservation Commission recommends that the variance be denied for the following reasons:

- The proposed building will be placed too close to the wellhead making it difficult to access if a problem occurs.
- The proposed building is located within feet of the leach field and holding tank and at one point covers the pump line between the two, making it difficult to access them if a problem occurs.
- The building will increase the flow of stormwater runoff on the abutters land as there is less pervious cover to absorb it. Water will flow from the Francis land onto the land next door.

Anne Daniels – 98 Toltec Point Road. Ms. Daniels read a letter dated June 1, 2023, into the record. She noted concerns with the potential impact of the proposed garage on the Francis property would have on their abutting property. Several photographs were included with the letter.

Doug Daniels – 98 Toltec Point Road. Mr. Daniels reiterated the concerns noted in the letter read by his wife, Anne Daniels. Mr. Daniels questioned how the proposed garage could be constructed 1 ½ feet from their property line without encroaching or impacting their lot.

Lynne Schmittlein – 105 Toltec Point Road. Ms. Schmittlein referred to her letter that was provided to the Board, noting her concerns with runoff, as well as concerns with the loss of trees on the site and other

development on the road. She questioned if the board were to grant the variance, would this set a precedence for future applications.

Anne Daniels - 98 Toltec Point Road. Ms. Daniels provided members with a copy on an email (6/7/2023) she received from Ellen Mulligan, Broker-Associate at Caldwell Banker Realty, regarding the potential negative impact of the value of their property at 98 Toltec Point Road as a result of stormwater runoff from the proposed garage.

Mr. DeMeo questioned if a stormwater management plan had been prepared for the site. Mr. Francis commented that this was a step by step process and they have not had one at this time, noting that he would do a water mitigation plan if required by the board. Mr. Francis made a comment regarding the removal of trees, noting there are no more trees to come down to put up the garage.

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 for the granting of a variance at 7:50 PM and came out of deliberative session at 8:03 PM.

During the deliberative session, the Members noted their concerns with fire/life safety issues, noting there were no comments from Fire Chief, and requested input from Chief Bengtson. Members stated that they felt that they could not vote on the request for the encroachment into the sideline setback as presented as they did not have the information available regarding the actual lot coverage, as the applicant or agent did not know for certain if the calculations included the square footage of the area of the lot in the small triangular area that has the easement for the benefit of the Daniels lot, or if the coverage took into account the non-conforming footprint of the Daniels home. The board would like to have a water mitigation plan prepared, which would then be reviewed by the Town's 3<sup>rd</sup> party engineer (at the applicant's expense) prior to making any decision on the application of having a 2-story wall, 3 feet from the property line, and information as to how they will construct the garage without disturbing the abutting lot. It was the decision of the board to continue the hearing, allowing time for the applicant to provide the additional materials and information as discussed. Members noted until such time that they have the requested information they did not discuss the issue of the encroachment into the side setback or the criteria for the granting of a variance. There will be additional discussion once this information is provided if the applicant chooses to proceed.

**MOTION:** Mr. Mills made the motion to continue the hearing for Stephen Francis, Tax Map 132, Lot 9 to July 19, 2023, to allow time for the applicant to provide the board with the requested information: 1) Evaluation of the life safety access by the Fire Chief. 2) The actual lot coverage calculations which depict the what the square footage of the entire lot, and the lot coverage that includes the total area of all structures on the site, including elevations. 3) A site plan and water mitigation plan. 4) Plan from a professional in the building trade as to how they are going to execute construction without encroaching on the abutting property, or an agreement between the abutters that they have agreed to how it can be accomplished. Mr. St. Peter Seconded. The Motion carried unanimously.

Mr. McDonough returned to the table at this time as a non-voting member.

## **VI. Correspondence:**

1. Motion for rehearing of Carla Ann Taylor and Mark Taylor's Administrative Appeal of the Planning Board's February 22, 2023 Decision Conditionally Approving a Site Plan, Conditional Use Permit, and a Condominium Subdivision for Koss Construction, LLC for Tax Maps 140-16 and 170-12

Mr. Stephens stated that the Board was in receipt of a letter dated May 12, 2023, which was a Motion for Rehearing ("Motion") submitted by James P. Cowles, Esq. agent for Carla Ann and Mark Taylor. The request for rehearing is relative to the Board's decision that was made on April 19, 2023 where they determined that they did not have jurisdiction over the decision of the Planning Board.

Mr. Stephens commented that Attorney Cowles cited in letter a number of things that are redundant to things the board has already heard and/or discussed with Counsel. Mr. Stephens noted there was only one thing that he had found new in this letter of communication, which was an indication that due process was being denied. There were a number of citations in the brief prepared by Mr. Cowles. Mr. Stephens added that was not the case as the Taylor's are afforded due process under [NHRSA 676:5, III](#). That statute talks about the recourse for innovation land use, decisions made by the planning board, and those are to be brought forth to the superior court, not the zoning board of adjustment. With that being said, there is recourse. The Taylor's may not like it, but there is recourse.

Mr. Stephens stated that members had been provided with the Motion and that Counsel recommended that the Zoning Board of Adjustment ("ZBA") deny the request.

Anni Jakobsen stated that she would recuse herself from the Board at this time as she was not on the Board at the time that this was discussed.

Mr. Stephens seated Mr. DeMeo as full voting member, noting that Mr. DeMeo was voting member for the prior discussion on April 19<sup>th</sup>.

A brief discussion ensued regarding the Motion.

Mr. Mills indicated that he did not see anything in the Motion that would make him believe that the ZBA erred in their decision claiming that they did not have jurisdiction.

Mr. DeMeo stated that he agreed with Mr. Mill's comment.

Mr. St. Peter agreed as well. He stated that he was not able to attend the non-meeting with Counsel, however it was his impression, and was reflected in the prior vote. Mr. St. Peter did not see anything in the Motion that made him think Mr. Cowles had brought up something that they failed to consider.

As a non-voting member, Mr. McDonough commented that he did not see anything that would lead him to conclude that the original decision, that the ZBA did not have jurisdiction, was erroneous. If that is true, then he thinks that the Motion for Rehearing should likewise be denied on the basis of a lack of jurisdiction.

Mr. Stephens commented that it seems that there was a unanimous sense to that.

**MOTION:** Mr. St. Peter moved that the Board has determined that it did not have jurisdiction to hear the appeal, and after having reviewed Mr. Cowles' Letter of May 12, 2023, the Board reaffirms its decision that it does not have jurisdiction, and therefore the Motion for Rehearing is denied. Mr. DeMeo Seconded. The Motion carried Unanimously.

Ms. Jakobsen returned to the Board at this time as a full voting member.

**VII. Unfinished Business:**

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the April 19, 2023, granting of a Variance for David Swindell for a parcel located at 358 Redding Lane (Tax Map 198 Lot 1).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on April 19, 2023. There was one minor typo made to the document.

**MOTION:** Mr. St. Peter made the motion to approve the formal Notice of Decision as corrected for David Swindell for a parcel located at 358 Redding Lane on Tax Map 198 Lot 1, and staff to mail said notice to the applicant or applicant's agent. Mr. St. Poloian seconded. The Motion carried with Ms. Jakobsen abstaining.

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the April 19, 2023, granting of a Limited Special Exception/Temporary Use for Great Waters Music Festival for a parcel located at 483 Ossipee Park Road (Tax Map 408 Lot 2.1).

The Board reviewed the draft Notice of Decision prepared by staff, as directed by the Board at the hearing on April 19, 2023. There were no changes made to the document.

**MOTION:** Mr. Stephens made the motion to approve the formal Notice of Decision as written for Great Waters Music Festival for a parcel located at 483 Ossipee Park Road on Tax Map 408 Lot 2.1, and staff to mail said notice to the applicant or applicant's agent. Mr. Mills seconded. The Motion carried with Ms. Jakobsen abstaining.

3. **Review of Policies and By-laws:**

Board members were provided with a copy of the current Bylaws and Policies for review. Planner Sassan noted he had spoken with Mr. Stephens regarding the seating of alternate members, questioning if Section VIII addressed the procedure to seat an alternate member who had been previously seated on a continued application.

Members briefly discussed the language as presented, noting that it addressed their practice and that no changes were necessary. There were no other comments or questions regarding the Policies as presented.

**VII. Adjournment:** Mr. Stephens made the motion to adjourn. Mr. St. Peter Seconded. The Motion carried Unanimously, and the Board adjourned at 8:28 PM.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant