

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

Public Meeting

July 19, 2023

Minutes

Present: Members: Bob Stephens, Sean Poloian, Michael Mills, Anni Jakobsen
 Alternates: David McDonough, Jerry Hopkins (left at 10:00 PM)
Excused: Member: Robert St. Peter
 Alternate: Nick DeMeo
Staff Present: Dari Sassan, Town Planner; 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 Robert St. Peter.

II. Pledge of Allegiance

III. Review/Approval of Minutes: 06/07/23

Motion: Mr. Mills made the motion to approve the June 7, 2023, minutes as amended. Mr. Poloian Seconded. The Motion carried unanimously.

IV. Hearings:

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

Mr. Stephens noted the email dated July 5, 2023, from Claire Wilkens, who represents the Applicants. Ms. Wilkens requested a continuation of the hearing to the August 16th ZBA meeting to allow additional time to prepare an amended plan.

Motion: Mr. Stephens moved to continue the public hearing for Variance request for Stephen C. Francis (132-9) to August 16, 2023. Mr. Mills Seconded. The Motion carried unanimously.

2. David & Nelia Amato (173-20) (205 Hanson Drive)
 Variance from Sections 3.2.2.1, 3.2.2.3, & 4.7.1.6.4

Mr. Stephens noted the request was for Variance from Sections 3.2.2.1, 3.2.2.3 and 4.7.1.6.4 of the MZO for the construction of a detached (20' x 24') garage to be located no closer than 6.6 ft. from the from the southerly side boundary line, where 20 ft. is required, no closer than 15.9 ft. from the edge of the R.O.W, where 25 ft. is required, and to allow construction on a waterfront lot with less than 100 tree points per waterfront grid, without having to install tree points.

Bryan Berling, of Land Tech, presented the application for the Applicants. Mr. & Mrs. Amato were present in the audience for the hearing. Mr. Berling gave a brief history of the property noting that the applicants own a pre-existing waterfront lot. This is the second to last house on the dead-end road. The

proposal is for a single bay garage which is separated by four feet (deck area and steps) from the existing home.

Mr. Berlind noted the proposed areas of encroachment along the side setback is 6.6' measured to the dripline of the roof. There is a 6' overhang for the roof. The proposed setback for the front property line is 15.9,' where 25' is required. Mr. Berlind noted there is an existing shrub/tree line going down both abutter lot lines, with a lush vegetative area between two retaining walls by the shoreline.

The site is covered with grass and is very stabilized. There is no erosion, and in Mr. Berlind's opinion is very suitable for shoreline protection and use. Mr. Berlind noted that it is hard to tell what the tree count is because the Ordinance mentions shrubs being allowed but does not say what you get for a tree count. While the shrubs have some count, he cannot tell you what it is, but certainly not 100 points as required by the Ordinance. Mr. Berlind pointed out that the ordinance says that the planning department has some latitude on determining what the tree count should be.

The variances are necessary as they cannot meet setbacks and they have too few tree points in the yard. This is a pre-existing lot that was created in 1968, is .212 acres in size and the house was built circa 1970. The zoning ordinance was enacted in 1985, therefore all of this was in place well before the ordinance was enacted, and they feel that rules enacted in 1985 are unfair to apply to the preexisting to small lot.

Mr. Berlind noted that the proposed lot coverage is 25.4%, which is less than the required 30%. Members questioned if they have received the necessary approval from NHDES. Mr. Berlind stated that they have not applied for a DES shoreland approval at this time. There was a brief discussion regarding if the project would require a full shoreland application, or if it may only rise to the level of a Permit by Notification (PBN).

Mr. Berlind reviewed each of the criteria for the granting of a variance, answering any questions from the Board.

Mr. Stephens questioned how many members were able to view the site. By a show of hands, all Members indicated that they had been to the site.

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 asking members if they felt that this project for the Amato's (173-20) would have any potential for Regional Impact? Mike – No; David – No; Anni – No; Sean – No; Bob – No.

Planner Sassan referred to his July 14, 2023, staff memo in which he commented that you are not certain if the lot is going to exceed 30% impervious coverage. If it does, the applicant will need to return for a variance to exceed the maximum of 30%. Mr. Sassan noted there were three variances being sought, and the Board should break those out separately. Mr. Berlind noted that he would make certain that the impervious coverage was not over 30%.

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

Members questioned the existing shed in the setback, on the abutting property line, asking if it was going to be removed. Members noted that as part of his presentation, Mr. Berlind stated that it would be removed. Mr. Amato stated it was a 6' x 8' shed and it would be either relocated to a conforming area or taken down. If it were to meet the required 20' setback, it would be in the middle of the yard.

Ms. Jakobsen questioned runoff, noting there was a steep slope. Mr. Amato explained that the garage will have a hip roof design and there will be retention walls to help support the foundation, which will have two 7' x 4' high flower beds filled with gravel. There will be gutters that drain and filter into that area.

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 the three variance requests independently. They entered at 7:30 PM and came out at 7:58 PM.

During the deliberative session members first discussed potential conditions of approval. Mr. Mills suggested that in addition to the recommended conditions of approval noted in Mr. Sassan's Staff Memo they also add the following: 8) Approved for a single story garage structure, with a walkout basement used for cold storage only. 9) Removal of the non-conforming shed. 10) Adequate drainage and plantings to be provided to and approved by the Code Enforcement Officer as part of the Building Permit process.

The Board then moved onto discussing each of the criteria for the granting of a variance from Section 3.2.2.1 (Twenty-five feet from the edge of the right of way). They agreed that granting the Variance would not be contrary to the public interest as the property is located near the end of a dead-end road and the garage will allow the applicant to keep their vehicles off the street, allowing greater access for fire/safety access on the street. For the same reason as referenced for the first criteria the variance observes the spirit of the Ordinance. 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 variance would allow the Applicant to construct a garage for vehicles in a reasonable location given its size and topography. The proposed Variance would not diminish the value of surrounding properties as the proposed garage would improve the value of the Property, and by adding storage space under the garage to store items from view and the value of the surrounding properties, therefore increasing taxes. 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 as the lot is the smallest in the area, and the size and shape of the Property limits the location for the garage. The proposed use is reasonable.

The Board next discussed the criteria for the granting of a variance from Section 3.2.2.3 (Twenty feet from any lot line) and all agreed that each of the reasons stated for Section 3.2.2.1 applied to this request as well.

Lastly, the Board discussed the criteria for the granting of a variance from Section 4.7.1.6.4 (...and groundcover in the waterfront buffer does not meet the point score requirement of 100 points in any segment, then such segment shall be planted, as determined by rule of the department, with trees, saplings, shrubs, or groundcover in sufficient quantity...). They agreed that granting the Variance would not be contrary to the public interest as a condition of approval, the applicant will be required to submit adequate drainage and plantings that will be provided to and approved by the Code Enforcement Officer as part of the Building Permit process. For the same reason as referenced for the first criteria the variance observes the spirit of the Ordinance.

The Board exited deliberative session in order to ask a question of the applicants' agent regarding the DES permit process. They asked Mr. Berling if they would be applying for a Standard Shoreland Permit or a Permit by Notification (PBN). Mr. Berling stated that he felt it would be a Standard Shoreland Permit due to the area to be disturbed. A PBN requires 1500 sq. ft. or less of disturbance and 900 sq. ft. or less of new hardscape. Mr. Berling stated that they will submit an application that exceeds the requirements for a PBN. Ms. Jakobsen requested that the board require plantings to address runoff from the site. Members

noted that the site is well established and noted their concerns with disturbing the shoreline. The plantings are intended for environmental protection reasons, not to satisfy the points.

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 a condition of approval, the board is requiring drainage and some plantings to mitigate runoff to deal with the ecological objective. The proposed Variance would not diminish the value of surrounding properties as the projects would improve the value of the Property. The proposed use is reasonable. 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 as there are no existing trees on the lot.

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

MOTION: Mr. Poloian made the motion to grant the request for a variance from Section 3.2.2.1 for David & Nelia Amato, Tax Map 173, Lot 20 for the construction of a single-story detached (20' x 24') garage to be located no closer than 6.6 ft. from the from the southerly side boundary line, where 20 ft. is required, with the following conditions: 1) Garage 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, NH DES Standard Shoreland approval and 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 (other) 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 further 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 7/19/2025 if use is not substantially acted on. 8) Garage shall be a single-story with a walkout basement/cold storage only. 9) Removal of the existing non-conforming shed. 10) An approved drainage and associated planting plan to be provided to and approved by the Code Enforcement Officer as part of the Building Permit process. Mr. Mills Seconded. The Motion carried unanimously.

MOTION: Mr. Mills made the motion to grant the request for a variance from Section 3.2.2.3 for David & Nelia Amato, Tax Map 173, Lot 20 for the construction of a single-story detached (20' x 24') garage to be located no closer than 15.9 ft. from the edge of the R.O.W, where 25 ft. is required, with the following conditions: 1) Garage 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, NH DES Standard Shoreland approval and 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 (other) 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 further 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 7/19/2025 if use is not substantially acted on. 8) Garage shall be a single-story with a walkout basement/cold storage only. 9) Removal of the existing non-conforming shed. 10) An approved drainage and associated planting plan to be provided to and approved by the Code Enforcement Officer as part of the Building Permit process. Mr. Poloian Seconded. The Motion carried unanimously.

MOTION: Mr. Poloian made the motion to grant the request for a variance from Section 4.7.1.6.4 for David & Nelia Amato, Tax Map 173, Lot 20 to allow the construction of a single-story detached (20' x 24') garage on a waterfront lot with less than 100 tree points per waterfront grid, without having to install tree points, with the following conditions: 1) Garage 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, NH DES Standard Shoreland approval and 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 (other) 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 further 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 7/19/2025 if use is not substantially acted on. 8) Garage shall be a single-story with a walkout basement/cold storage only. 9) The existing non-conforming shed shall be removed. 10) An approved drainage and associated planting plan shall be provided to and approved by the Code Enforcement Officer as part of the Building Permit process. Mr. McDonough Seconded. The Motion carried unanimously.

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

3. Frederick & Karen Shine (120-29) (21 Grande Street)
Variance from Section 3.2.2.3

Mr. & Mrs. Shine were present in the audience for the hearing. Mr. Shine briefly stated that his request is to allow him to replace his existing deck, increasing it by 2 feet in width. Mr. Shine stated there is an existing porch, and the deck will become the same width as the porch.

Chairman 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 asking members if they felt that this project for the Shines (120-29) would have any potential for Regional Impact? Mike – No; David – No; Anni – No; Sean – No; Bob – No.

Mr. Stephens questioned how many members were able to view the site. By a show of hands, all Members indicated that they had been to the site.

Mr. Stephens noted the dissertation from Clayton Titus, Building Code Administrative Assistant, who had completed the research on the applicants' building permit application. There are questions with regards to what was permitted and what actually exists. There was a permit issued 1988 for the deck. In 2006 a permit was issued to enclose a 12' x 24' screened porch. The permit in 1988 indicated that the deck was greater than 20' from the rear property line.

Mr. Stephens stated that the issue with this application is that there is no surveyed line, or established line that can be referenced to. There is a neighboring property that had been surveyed. Based on Mr. Stephens observations, there was a stake with a ribbon and associated marking information on that ribbon. He was not able to find another pin. Mr. Shine had displayed where he thought that another pin was found. Without that information there is a question as to where is the house in relationship to the property line? The request for 2 feet does not seem too insurmountable, but not knowing what impact that is, you don't know what the intrusion may be.

Mr. Mills noted that there are no dimensions to align or pin. They do have dimensions for the building, but by not having dimensions to the line, you may be compounding a problem.

Mr. Stephens stated the issue is to establish the rear lot line. This would be the only line that the Board would need to process the application. A full survey, completed by a licensed land surveyor, is not necessary. That would provide information for the Board as to the distance the house is from the lot line, and subsequently what the potential intrusion may be, if any.

It was noted that per the Board's Rules of Procedure, a surveyed plan is a requirement for all applications for dimensional relief. Baring receipt of a surveyed plan, they are asked to consider dimensional relief without a plan. Mr. Sassan commented that if the board were to make an official decision regarding receipt of a surveyed plan, that they should also identify a unique reason why this recently adopted policy is going to be deviated from.

Mr. Mills commented that it is hard to apply dimensional relief when they don't know what the dimension is.

Mr. Hopkins noted an instance where a property owner had built on the abutters property when a line was in question. Once the survey was provided, they found out that they had built over the line. Mr. Hopkins referred to the GIS map, noting it's not necessarily accurate, as far as the setbacks are concerned. It does show that the rear screen porch and part of the deck is non-conforming as it is presently.

Mr. Shine briefly explained how he found the markings. There is a pin located behind his shed which depicted where there was going to be a well. The pin is still there. He measured from the pin to where the proposed deck would end, which is 19' from the property line, and he has land beyond that. Mr. Shine reiterated that the deck will not extend any further than the existing screened porch.

Mr. Stephens understands the situation, noting they do not need a full site survey, they need a rear line establishment. If the board were to act on this, they would only be compounding a potential issue. Absent a survey of the rear lot line, the members felt that they could not proceed with the application as presented.

Motion: Mr. Stephens moved to continue the public hearing for Variance request for Frederick & Karen Shine (120-29) to August 2, 2023. Mr. McDonough Seconded. The Motion carried unanimously.

4. Passio Point LLC (263-88) (26 West Point Road) (Woodland Guest House)
Variance from Sections 3.6.1, 7.4 and 7.5
5. Passio Point LLC (263-88) (26 West Point Road) (Beach Guest House)
Variance from Sections 3.2.2.3, 3.6.1, 7.4 and 7.5 (to the extent necessary)

Mr. Stephens noted the request was for Sections 3.6.1, 7.4 and 7.5 of the MZO for Passio Point LLC. The applicant proposes to remove the existing 2nd of three units (Woodland Guest House) on the property to be removed from the side setback and to be reconstructed/expanded in a conforming space, and a request from Sections 3.2.2.3, 3.6.1, 7.4 and 7.5 (to the extent necessary) of the MZO for Passio Point LLC. The applicant proposes to remove the existing 3rd of three units (Beach Guest House) on the property to be torn down, reconstructed, and expanded upward in its existing non-conforming footprint.

Mr. Stephens questioned how many members were able to view the site. By a show of hands, all Members indicated that they had been to the site.

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 asking members if they felt that this project for Passio Point LLC (263-88) would have any potential for Regional Impact? Mike – No; David – No; Anni – No; Sean – No; Bob – No.

Attorney Christopher Boldt of Donahue, Tucker & Ciandella, PLLC (DTC), Agent for the Applicants, was present representing the applicants, who were present in the audience.

Planner Sassan referred to his July 14, 2023, staff memo in which he commented that the proposal is for the Main house (Residence 1) to be demolished and replaced with a larger residence in a partially different location. Existing nonconforming dwelling units (Residence 2 [Woodlands Guest House] and Residence 3 [Beach Guest House]), both to be demolished. Residence 2 (Woodlands Guest House) to be replaced with a larger residence in a new, conforming location. Residence 3 (Beach Guest House) to be replaced with a structure in the same nonconforming footprint, but expanding from 1.5 stories to 2 stories, though not increasing in overall height.

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 the two variance requests independently. They entered at 9:44 PM and came out at 9:55 PM, and then entered at 10:08 PM and came out at 10:15 PM.

The Board, the applicant's agent and staff discussed whether 1 of the 3 units could be considered conforming or whether the lot as a whole, including all 3 dwelling units, should be considered a nonconforming use. Planner Sassan indicated that he has previously discussed this with Counsel and has taken the stance that in such circumstances, one of the dwelling units will be identified as the conforming unit and the other will be considered nonconforming. However, rather than attempting to reach agreement on that point, the Board, the applicant, and staff agreed that by granting a variance from Article 3.6.1, the point becomes moot. Further, it was agreed by all that a variance from 3.6.1 would eliminate the need for any other variance relief. Planner Sassan asked about the fact that the building being converted from 1.5 stories to 2 stories within the same footprint sits less than 10-feet from the property line, thus making it ineligible for upward expansion per Article 7.5. The Board unanimously responded by establishing that such an increase, which does not result in additional floor space, does not constitute an upward expansion.

Mr. Boldt spoke to the suggestion that if the Board were to grant the variance from Section 3.6.1 he was fine with it, so long as the Board makes the finding that they do not need any of the other relief asked for in the application as submitted.

Mr. Boldt noted that in his narrative, it clearly explains on the bottom of page 1 and page 2 what they are doing with the Main House. Mr. Mills questioned if that were true, and Section 3.6.1 covers the lot, they only need one variance and not two. They could vote on only one application for relief from Section 3.6.1 and they would be done. Mr. Boldt suggested that they make a finding that they do not need the other variance sought for the changes to the two residences (Woodland and Beach Guest Houses) as shown on the Plan titled "Proposed Conditions" dated April 18, 2023, as prepared by Ames Associates (referred to as "Exhibit B" in the Narrative).

Having identified that a variance from Article 3.6.1 would be the only necessary relief, the Board further determined that 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 a condition of approval, the site contained 3 dwelling units prior to the proposal and it will still have 3 dwelling units upon conclusion of the project.

The proposed Variance would not diminish the value of surrounding properties as the projects would improve the value of the Property. The proposed use is reasonable. 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 as it has existed as a 3-dwelling unit lot for many years without incident.

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

MOTION: Mr. McDonough made the motion to grant the request for a variance from the provisions of Section 3.6.1 for Passio Point, LLC, Tax Map 263, Lot 88, providing that the constructing, rebuilding and expanding of each of the three structures as depicted on Exhibit B to the applicants Narrative be approved. Having made the above determination, the Zoning Board of Adjustment hereby finds that relief from Sections 3.2.2.3, 7.4 and/or 7.5 of the Zoning Ordinance are not required per Exhibit B as referenced above, with the following conditions: 1) The project limits shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction. 2) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval. 3) The applicant and owner are solely responsible for complying with the conditions of approval. 4) Per RSA 674:33, approval expires on 7/19/2025 if the use is not substantially acted on. Mr. Mills Seconded. The Motion carried unanimously.

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

VI. Correspondence:

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

MOTION: Mr. Mills nominated David McDonough as an appointed member to fill the vacancy in the membership (Mr. St. Peter) until the next regular election (May 14, 2023). Ms. Jakobsen Seconded. The Motion carried with Mr. McDonough abstaining.

VII. Unfinished Business: – None

VII. Adjournment: Mr. Stephens made the motion to adjourn. Mr. McDonough Seconded. The Motion carried Unanimously, and the Board adjourned at 10:25 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant