

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

Public Meeting

August 2, 2023

Minutes

Present: Members: Bob Stephens, Michael Mills, Anni Jakobsen, David McDonough
 Alternates: Jerry Hopkins, Nick DeMeo
Excused: Member: Sean Poloian
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 and staff to the public. Mr. Stephens then appointed Jerry Hopkins to sit on the Board with full voting privileges in place of member Sean Poloian through the end of Hearing #1, and Nick DeMeo to sit on the Board with full voting privileges in place of member Sean Poloian beginning with Hearing #2 through the remainder of the meeting.

II. Pledge of Allegiance

III. Review/Approval of Minutes: 07/19/23

Motion: Mr. Hopkins made the motion to approve the July 19, 2023, minutes as amended. Mr. McDonough Seconded. The Motion carried unanimously.

IV. Hearings:

1. Continuation of Public Hearing for Frederick & Karen Shine (120-29) (21 Grande Street)
 Variance from Section 3.2.2.3

Mr. Stephens stated that this was a continued hearing. The applicant is proposing the reconstruction of an existing deck, and to extend it by 2 feet in width, and by 3 feet in length. He noted at the hearing held on July 19, 2023 there was an issue with defining where the rear lot line was. The hearing was continued allowing the applicant an opportunity to evaluate how they wanted to proceed. Mr. Stephens asked Mr. Shine where they stood at this time.

Mr. & Mrs. Shine were present in the audience for the hearing. Mr. Shine noted that at the prior hearing he was unprepared to be blindsided, which he felt he was. He gave a brief history of his ownership of the property, stating there were markers identifying where the property lines were.

Mr. Shine hired a contractor to replace the deck. He stated the lot line for his property was verified by Jim Hambrook. Mr. Stephens questioned if Mr. Shine had a letter from Mr. Hambrook indicating that. Mr. Shine requested that the Town Planner contact Mr. Hambrook directly with. Mr. Sassan confirmed that he had spoken with Mr. Hambrook, however Mr. Hambrook did not state such over the phone, adding that he would be in touch with Mr. Shine about completing the work. Mr. Shine stated that he had gotten three quotes to get the work done. One could not come until October or November, another was out eight (8) months and the third could have completed the work for this hearing, at a cost of \$37,000.

Mr. Shine stated that there was a building permit that was applied for and approved for the current deck/screen porch. Mr. Stephens stated that the Board did not deal with building permits and/or the approval of them.

Mr. Shine argued that he had measured from the stakes behind his house to the deck, and that it was over 22 feet from that line. Mr. Shine has applied for the variance and completed the application. He feels that he complies with the criteria on the application, adding the stakes are there on his property. Mr. Stephens noted that was the challenge that the building inspector had when he went out to the site to evaluate the lot line and was not comfortable with what he saw. The issue is that the board noted at the prior meeting that a survey of the line in question would need to be provided so they would know the distance for relief they would be granted. Mr. Shine provided members with a copy of a septic design that was approved around 1987-1988. It was noted that a septic design is not a survey.

Discussion continued regarding the issue with the application is that there is no surveyed line, and that was what the Board had conveyed to Mr. Shine at the prior meeting.

Mr. Shine questioned if he would be able to replace his existing deck in-kind without the need for a variance, and if steps were included as part of the existing footprint. Mr. Sassan stated that would be a question that could be answered by the Code Enforcement Officer.

After further discussion, Mr. McDonough suggested that the applicant could withdraw his application, without prejudice, apply for a building permit to replace the deck in-kind, and there would be a determination made on that new application. He could then make the decision as to whether he wanted to proceed with that or he could still have the property surveyed and seek relief through the variance process.

MOTION: Mr. Stephens made the motion to accept the withdrawal, without prejudice, for the variance application for Frederick & Karen Shine, Tax Map 120 Lot 29. Mr. McDonough Seconded. The Motion carried unanimously.

Mr. Hopkins stepped down from the board at this time. Mr. DeMeo was appointed with full voting privileges for the remainder of the evening.

2. Briand T. & Barbara J. Levasseur (98-93) (Leisure Drive)
Variance from Section 3.2.2.1

Mr. Stephens noted the request was for Sections 3.2.2.1, of the MZO for Briand T. & Barbara J. Levasseur. The applicant seeks approval for a residence to be placed in the front setback, 19 feet from the front property line where 25 feet is required.

Briand Levasseur presented his application for the variance. He noted that the lot is currently vacant and is a lot that is triangular in shape, bordered by the road on two sides. They have designed a home to be placed on the lot that meets the side setback and the road setback on one side. They are seeking relief for a portion of the dwelling to be located 19 feet from the property line. Mr. Levasseur answered any questions from the board.

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 Briand & Barbara Levasseur (98-93) would have any potential for Regional Impact? Mike – No; David – No; Anni – No; Nick – No; Bob – No.

Mr. Stephens questioned how many members were able to view the site. By a show of hands, voting members Mills, McDonough, Jakobsen and Stephens had been to the site.

Mr. Stephens noted that it was an unusual lot given that it was a corner lot with road frontage on two of the three sides. The lot is basically at the junction of a dead end road, with low traffic volume.

Planner Sassan referred to his July 27, 2023, staff memo in which he commented that the applicant had submitted a plan depicting the location of the home and garage is based upon a surveyed plan of the vacant site (also included in the applicant's submission). The building footprint was overlaid upon the surveyed plan by the applicant. Staff advises that the Board decide whether the plan complies with the Board's Rules of Procedure.

A brief discussion took place with questions regarding the septic, the dimensions depicted on the place in reference to the right-of-way and if there was a possibility of flipping the footprint of the proposed structure which may eliminate the need for relief.

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 7:40 PM and came out at 7:43 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 especially given the unique location of the site, bounded on three sides by roads, it is not inconsistent with the neighborhood, and will not change the intent of the ordinance for setbacks which is adequate provision of light and air between buildings. 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 dwelling 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 as 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 unique shape of the lot, the lot is triangular shaped with frontage on two roads that are encumbered by a 25 ft setback. The proposed use is for a residential dwelling on a residential lot and is a reasonable use. The Board determined that due to these unique conditions, a variance is necessary to enable the reasonable use of the property.

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

MOTION: Mr. DeMeo made the motion to grant the request for a variance from Article 3.2.2.1 for Briand T. & Barbara J. Levasseur, Tax Map 98, Lot 93 to allow for the construction of a single family home, with attached garaged, to be placed in the front setback, 19 feet from the front property line where 25 feet is required, subject to the following conditions: 1) Foundation 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, 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) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval. 4) The applicant and owner are solely responsible for complying with the conditions of approval. 5) Per RSA 674:33, approval expires on 8/2/2025 if use is not substantially acted on, 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. 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: - None.

VII. Unfinished Business:

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the July 19, 2023, granting of a variance for David & Nelia Amato for a parcel located at 205 Hanson Drive (Tax Map 173, Lot 20).

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

MOTION: Mr. Mills made the motion to approve the formal Notice of Decision as written for David & Nelia Amato for a parcel located at 205 Hanson 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 (DeMeo).

2. Review and possible authorization for the Chair to sign the formal Notice of Decision for the July 19, 2023, granting of a variance for Passio Point, LLC for a parcel located at 26 West Point Road (Tax Map 263, Lot 88).

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

MOTION: Mr. Mills made the motion to approve the formal Notice of Decision as written for Passio Point, LLC for a parcel located at 26 West Point Road (Tax Map 263, Lot 88), and staff to mail said notice to the applicant or applicant's agent. Mr. McDonough seconded. The Motion carried four (4) in favor (Mills, McDonough, Jakobsen, Stephens), none (0) opposed, and one (1) abstention (DeMeo).

VII. Adjournment: Mr. Stephens made the motion to adjourn. Mr. DeMeo Seconded. The Motion carried Unanimously, and the Board adjourned at 7:49 PM.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant