



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision** **Request for Variance** **Stephen C. Francis** **Tax Map 132, Lot 9**

**August 17, 2023**

**Applicant:** Stephen C. Francis  
100 Toltec Point Road  
Moultonborough, NH 03254

**Location:** 132 Toltec Point Road, Moultonborough, NH (Tax Map 132, Lot 9)

On June 7, 2023, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Stephen C. Francis (hereinafter referred to as the "Applicant" and/or "Owner"). The Applicant requested a Variance from MZO Section 3.2.2.3 to allow for the construction of an attached garage 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 on the parcel located in the Residential Agricultural (R/A) Zoning District.

The public hearing was continued to July 19, 2023, and was closed on August 16, 2023. At the regularly scheduled Zoning Board meeting on August 16, 2023, the Board voted by a vote of four (4) in favor (Mills, DeMeo, Poloian, Stephens), and one (1) opposed (Jakobsen), to **grant** the variance for Tax Map 132, Lot 9 at 100 Toltec Point Road, located in the Residential Agricultural (R/A) Zoning District.

Based on the application, testimony given at the hearings, additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 100 Toltec Point Road (Tax Map 132, Lot 9).
- 2) Stephen C. Francis is the owner of record for the lot.
- 3) Stephen C. Francis presented the application for the variance.
- 4) The lot is located in the Residential Agricultural (R/A) Zoning District, and the residential use is a use allowed by right in that district.

- 5) Prior to public input, the Zoning Board voted five (5) in favor (Mills, McDonough, Jakobsen, Poloian, Stephens) that the proposal, as revised, did not have the potential for Regional Impact.
- 6) The proposal is for the construction of an attached garage 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.
- 7) The Applicant had obtained a Shoreland Permit by Notification (PBN #2023-00693) from the NH Department of Environmental Services (DES) for the project as originally proposed, prior to the plan having been revised for the August 16, 2023, public hearing.
- 8) One member of the Conservation Commission provided written comments noting the concerns of the Commission.
- 9) Two members of the public spoke to the application for the project.
- 10) The Board discussed the five criteria for both side setback encroachments as one, making one motion that applied to both variance requests, with the justification for the five criteria being the same.
- 11) Granting the Variance will 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.
- 12) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #11 above.
- 13) By granting the Variance, 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 variance will allow the Applicant to construct a garage.
- 14) Granting the Variance does not diminish the value of surrounding properties provided 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, is a reasonable use, and will be new construction, therefore adding value to the Applicant's Property and the value of the surrounding properties in keeping with the lake-side residential character of the neighborhood.
- 15) Special conditions of the Property distinguish 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.

On August 16, 2023, the Zoning Board of Adjustment voted by a vote of four (4) in favor (Mills, DeMeo, Poloian, Stephens) and one (1) opposed (Jakobsen) to grant the request for the Variance

from Section 3.2.2.3 for Stephen C. Francis, Tax Map 132, Lot 9 to allow for the construction of an attached garage 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:

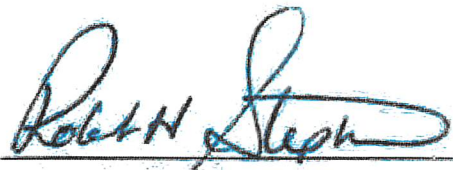
1. Garage and roof overhang limits shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to construction.
2. Project shall obtain necessary state and local permits, to include approval of a town building permit, NH DES Shoreland approval and septic approval. All 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. No bedrooms shall be added without notification to the Land Use Office.
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. An engineered water mitigation plan shall be provided prior to issuance of building permit addressing all areas impacted by the new construction.

Further, the Board voted to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting.

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The Board of Adjustment, on October 4, 2023, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision, send to the applicant and place same in the case file by a vote of three (3) in favor (Mills, Jakobsen, Stephens), none (0) opposed, and two (2) abstentions (McDonough, Hopkins).

The decision made to grant the variance on August 16, 2023, shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens  
Chairman, Zoning Board of Adjustment

cc. Scott Dvorak – Building Inspector (by email only at [sdvorak@moultonboroughnh.gov](mailto:sdvorak@moultonboroughnh.gov))  
Map Lot Document File