



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision - DENIAL

Request for Variances – Sections 3.2.2.3, 3.2.2.4 & 4.7.1.6.4

Kaitlin Carroll

Tax Map 132, Lot 2

May 1, 2024

Applicant: **Kaitlin Carroll**
PO Box 982
Moultonborough, NH 03254

Location: **122 Toltec Point Road, Moultonborough, NH (Tax Map 132, Lot 2)**

On December 6, 2023, the Zoning Board of Adjustment of the Town of Moultonborough (hereinafter referred to as the “Board” and/or “ZBA”) addressed the application for Kaitlin Carroll (hereinafter referred to as the “Applicant” and/or “Owner”) for variances from Zoning Articles 3.2.2.3, 3.2.2.4 & 4.7.1.6.4 to permit the expansion of an existing nonconforming structure, where such expansion shall be located within 0.5 feet of the lake reference line where 50 feet is required and 10 feet from the side property line where 20 feet is required, and to increase impervious percentage above 20% without meeting vegetative-point-score requirements within each sector in the Residential Agricultural (RA) Zoning District.

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

- 1) The property is located at 122 Toltec Point Road (Tax Map 132, Lot 2).
- 2) The owners of the record for 122 Toltec Point Road are Maria Milano and Kaitlin Marie Carroll.
- 3) The lot is located in the Residential Agricultural (RA) Zoning District.
- 4) On December 6, 2023, staff indicated that correspondence had been received from the applicant and that they were unable to attend due to illness and requested a continuance to the next ZBA meeting of December 20, 2023.
- 5) On December 20, 2023, the Board noted that the Land Use Office and the Applicant had been in discussions and that the Applicant had agreed to continue the application to the ZBA meeting of January 17, 2024.

- 6) On January 17, 2024, the Board opened the application for Kaitlin Carroll. Member McDonough recused himself from the Board as he is a direct abutter to the property.
- 7) The applicant was represented by John Smits at the hearing on January 17, 2024.
- 8) At the January 17, 2024 meeting, there were only four members seated. Chairman Stephens questioned Mr. Smits wished to proceed with a Board of four. Mr. Smits indicated that he would continue with a 4-member board this evening.
- 9) The applicant is requesting relief from Zoning Articles 3.2.2.3, 3.2.2.4 & 4.7.1.6.4 to permit the expansion of an existing nonconforming structure, where such expansion shall be located within 0.5 feet of the lake reference line (shoreline) where 50 feet is required and 10 feet from the side property line where 20 feet is required, and to increase impervious percentage above 20% without meeting vegetative-point-score requirements within each sector.
- 10) Prior to public input, the Zoning Board voted four (4) in favor (Mills, DeMeo, Poloian, Stephens) and none opposed that the proposal did not have the potential for Regional Impact.
- 11) The board was in receipt of a letter dated February 6, 2024 from owners of the property at 118 Toltec Point Road stating concerns with the close proximity of the residence to their mutual boundary line, preservation of the natural beauty, over development, rainfall absorption, dispersion, and vegetation, as well as diminution of value of their home.
- 12) Members questioned the discrepancy in the boundary line to the north.
- 13) The Applicant's agent indicated that the setbacks requested are from the plan prepared by Brown Engineering, dated 1-15-2024.
- 14) Members questioned if there was a formal boundary line agreement with the abutters located to the north (118 Toltec Point Road, Tax Map 132 Lot 3).
- 15) Members noted concerns that there has been no formal boundary line agreement with the abutting property, therefore questioning the location of the line in which the variance request for a 10-foot sideline setback is from, and the area of the lot could affect lot coverage.
- 16) The applicant has not applied for or received a NH DES approval for an individual sewage disposal system.
- 17) A representative of the Conservation Commission noted concerns with quality of the lake, stormwater runoff, and the location of the existing leach field.
- 18) On January 17, 2024, upon the request of the applicant, the Board continued the request for a variance from Article 4.7.1.6.4 to February 7, 2024, to allow the applicant to compile additional information, resolve the boundary line question and potentially redesign the project.
- 19) On January 17, 2024, the Board continued the request for a variance from Article 3.2.2.3 to February 7, 2024. to allow the applicant to compile additional information, resolve the boundary line question and potentially redesign the project.
- 20) On January 17, 2024, the Board deliberated and granted the variance request from Article 3.2.2.4 with conditions.

- 21) Granting the Variance would not be contrary to the public interest because of the location of the existing structure and enhanced stormwater management.
- 22) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #21 above.
- 23) By granting the Variance, substantial justice would be done as there is no public benefit to be gained by denying the request, with the improved water management which would outweigh any gain to the public by denying the application.
- 24) Granting the Variance would not diminish the value of surrounding properties for the lake setback as it would be new construction.
- 25) Special conditions of the Property distinguish it from other properties in the area as the current location of the dwelling is not being removed and will be able to be connected to the proposed addition. The proposed use is reasonable as it is the only way to connect any expansion in a conforming area.
- 26) On January 17, 2024, the Zoning Board of Adjustment voted by a vote of four (4) in favor (Mills, DeMeo, Poloian, Stephens), none (0) opposed, to grant the request for the Variance from Section 3.2.2.4 for Kaitlin Carroll, 122 Toltec Point Road, Tax Map 132, Lot 2, subject to the following conditions: 1) Structure limits shall be located and pinned in accordance with this approval by a NH licensed surveyor prior to placement if the existing structure shall have to be significantly removed. 2) Project shall obtain necessary state and local permits, to include approval of a town building permit. 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) All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval. 5) The applicant and owner are solely responsible for complying with the conditions of approval. 6) Per RSA 674:33, approval expires on 1/17/2026 if use is not substantially acted on, and to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision for review and approval by the Board.
- 27) The Public Hearing was re-opened at the February 7, 2024 ZBA meeting, and at the request of the applicant, was continued to February 21, 2024.
- 28) The Public Hearing was re-opened at the February 21, 2024 ZBA meeting, and at the request of the applicant, was continued to April 3, 2024.
- 29) The Public Hearing was re-opened at the April 3, 2024 ZBA meeting. There was no one present in the audience for this hearing, nor any correspondence from the applicant, the Board continued the hearing to May 1, 2024.
- 30) The Public Hearing was re-opened at the May 1, 2024 ZBA meeting. There was no one present in the audience for this hearing, nor any correspondence from the applicant. The Board went into deliberative session to discuss the criteria based on information available at this time, as well as testimony previously entered into the record.

- 31) Granting the Variance would be contrary to the public interest and would not be consistent with the spirit of the ordinance as the Board felt that not having the northern property line established, they did not know where the 10 foot relief would be, and they could not determine the acreage of the property, therefore unable to determine the impervious surface, or the ability to meet the tree point requirement due to ledge on the site.
- 32) By granting the variance, substantial justice would not be done as the encroachment poses significant impact to the abutter.
- 33) Granting the variance could diminish the value of the abutting property due to the proximity of the proposed intrusion into the side setback.
- 34) The Board discussed the hardship criteria and did not identify a unique or unnecessary hardship and did not come to consensus as to whether the proposed use is reasonable.
- 35) On May 1, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Mills, DeMeo, Jakobsen, Poloian, Stephens) and none (0) opposed to deny the request for a variance as the applicant failed to meet the criteria.

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.

The Board of Adjustment, on May 15, 2024, 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 four (4) in favor (Mills, Merrill, Poloian, Stephens), one (1) abstention (McDonough).

The decision made to deny the variance on May 1, 2024, 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. Jeff Blackwell – Building Inspector (by email only at jblackwell@moultonboroughnh.gov)
Map Lot Document File