



Town of Moultonborough Zoning Board of Adjustment

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

April 17, 2024

Applicant: **Stephen C. Francis**

100 Toltec Point Road

Moultonborough, NH 03254

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

On April 3, 2024, the Zoning Board of Adjustment of the Town of Moultonborough tabled the application of Stephen C. Francis (hereinafter referred to as the "Applicant" and/or "Owner") for a variance from MZO Section 3.2.2.3.

At the request of the Applicant, the public hearing was continued to April 17, 2024. At the regularly scheduled Zoning Board meeting on April 17, 2024, the Zoning Board voted five (5) in favor (Sperry, DeMeo, Merrill, Poloian, Stephens) to grant the variance to allow for the construction of an attached garage to be placed in the southerly side setback, located 15'-1" (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.

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) Brett Tourigny was present to represent the Applicant, Stephen C. Francis, in person. Mr. Francis presented the application for the variance via telephone.
- 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 (Sperry, DeMeo, Merrill, 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 15'-1" (at its closest point) from the southerly side boundary line where 20-ft is required.
- 7) One abutter submitted comments to the Board indicating they did not oppose the application for the project as proposed, so long as the Board imposed a condition that the plans submitted from Moser Engineering be incorporated into the approval.
- 8) 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.
- 9) Granting the Variance will not be contrary to the public interest as the proposed construction, as amended, would result in less encroachment into the southerly setback, and eliminate the encroachment into the northerly setback than the previous approve variance, and will not alter the essential character of the neighborhood and the garage will not cause overcrowding as the setback was substantially preserved.
- 10) Granting the Variance would be consistent with the spirit of the Ordinance for the same reasons as stated in Item #9 above.
- 11) 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 relocation of the proposed garage will allow for a modern septic system and will be beneficial to lake quality.
- 12) Granting the Variance does not diminish the value of surrounding properties as it will not cause any overcrowding or change in the character of the neighborhood, is a reasonable use, and will be new construction, and provide stormwater management.
- 13) Special conditions of the Property distinguish it from other properties in the area due to the location of the new septic system, and land configuration locating the garage eliminates the previous variance to the north and created a minor encroachment to the south provides for stormwater management to the north. The proposed use is for a garage on a residential lot and is a reasonable use in New Hampshire.

On April 17, 2024, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Sperry, DeMeo, Merrill, Poloian, Stephens) and none (0) opposed 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 placed in the southerly side setback, located 15'-1" (at its closest point) from the southerly side boundary line where 20-ft is required, subject to the following conditions:

1. As acknowledged and consented to by the applicant, the approval granted on 8/17/2023, and associated conditions of approval, shall immediately become null and void.

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.
5. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval and include the stormwater mitigation as contained in the Stormwater Drainage Analysis prepared by Mark Moser, PE, dated March 2024.
6. The applicant and owner are solely responsible for complying with the conditions of approval.
7. Per RSA 674:33, approval expires on 8/16/2026 if use is not substantially acted on.

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 1, 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 three (3) in favor (Poloian, DeMeo, Stephens), none (0) opposed, and two (2) abstentions (Mills, Jakobsen).

The decision made to grant the variance on April 17, 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