Town of Northwood
Zoning Board Adjustment
February 22, 2016

Chairman Roy Pender calls the meeting to order at 6:33 p.m.

PRESENT: Chairman Roy Pender, Vice-Chairman Tom Lavigne, Curtis Naleid, Doug Pollock, Board Administrator Linda Smith, and Secretary Lisa Fellows-Weaver.

ABSENT: Matthew Fowler, Alternate Bruce Farr, and Alternate Robert Bailey

Mr. Pender states that there are only four members present tonight, which requires that there must be three votes in the affirmative for the variance requests to pass. He states that the applicant can proceed with the four members or postpone for a five member board.

Mr. Silva states that he would like to proceed tonight with four members.

VOTING DESIGNATION: Roy Pender, Tom Lavigne, Matthew Fowler, and Doug Pollock.

MINUTES:
January 25, 2016
Mr. Lavigne makes a motion, second by Mr. Pollock, to approve the minutes of January 25, 2016, as written. Motion passes unanimously, 4/0.

NEW CASES:
Case #16-02: Matthew Silva, 57 Fiore Rd. Map 116, Lot 53.
Applicant seeks the following variances from the Northwood Development Ordinance, to permit construction of a single family residential structure:

- A variance to Art. IV, Section (B)(2)(b); lot is .19 Acs. where 2 Acs. is required;
- A variance to Art. VII, Section (C)(5); structures within the 12' setback;
- A variance to Art. IV, Section (B)(1)(b)(2); type of frontage-private road
- A variance to Art. IV, Section (B)(1)(c)(1); length of frontage

Property currently owned by Gregory George.

Matt Silva is present along with the property owner Greg George. Mr. Pender notes that there is a letter of authorization from Mr. George granting permission for Mr. Silva to speak on his behalf.

A discussion is held regarding the plot plan and the setbacks of the property. This information is provided and reviewed by the board.

Mr. Silva explains that there is an existing structure on the property that is a seasonal cottage. The proposal is to build within the same footprint including

all accessory structures. He adds that the reason the new structure becomes more non- conforming is because they are proposing to raise the structure; it will be a walkabout basement being raised from 5' to 8'. He explains that the existing foundation has structural issues and needs to be addressed. The primary intention of the home is not to be year-round. In addition, Mr. Silva states that the roof line will be changed from changed from 5/12 pitch to an 8/12 pitched roof line.

Mr. Lavigne asks if there are any structures across the street. Mr. George replies yes and explains that the structure sits up on a hill.

Mr. Naleid asks the difference of the height is from the existing structure to the proposed structure. Mr. Silva replies that it is approximately 7½ ft. Mr. Naleid asks if there is any living space on the second level. Mr. Silva replies that there is no living space; it is roof space. He adds that the roof is a pitched roof and the structure has had additions over time and both structures have an average roof pitch from 4 ft. to 6 ft.

Mr. Pollock notes ribbons on the site. Mr. George explains that the property lines are marked by these ribbons. He states that the lot has been surveyed.

Mr. Pollock asks about the location of the new septic system. Mr. Silva replies that the new septic system will be located at the south corner of the property, closer to the road and under the driveway; chambers system.

Mr. Lavigne asks if there is a water course on the property. Mr. Silva replies that there is seasonal stream on the abutting property.

A discussion is held regarding the well on the property. Mr. Silva states that there are two wells on the property. The current well is on the west side of the structure. He adds that the dug well will be terminated and is not shown on plan. Mr. George states that the well is 7-8 ft. towards the lot line. Mr. Pender asks if the well shown is on the plan is the existing well. Mr. Silva replies yes and with the chambered septic system proposed all DES requirements will be met. A discussion is held regarding the well being within the 75' radius of the septic system. Mr. Silva explains that with this type of septic system the property owner is required to sign a service agreement with a company that will continuously monitor and maintain. Mr. Lavigne asks if this will impact the neighbors. Mr. Silva replies that the state has become more lax within the 75' radius requirements depending on the type of system proposed.

Mr. Pender states that the well radius is beyond setbacks. He asks the width of the abutting properties. Mr. Naleid replies that the neighboring lot is 61 ft. wide. Mr. Pender asks if this will impinge on the neighboring property. Mr.

George replies that they do not know where the abutting property's septic system is. He adds that the neighboring property is also a seasonal cottage. Mr. Pender asks if there are seasonal properties on both sides of the existing structure. Mr. George replies yes.

Mr. Pender asks if the lot can be made any larger. Mr. Silva replies no, it cannot be made any larger.

Mr. Lavigne notes that the property is about 1/5 of an acre. Mr. George replies that the lot is 60' x 140'.

Mr. Pollock states that he is uncomfortable with not knowing where the septic systems are located on the neighboring properties and there are items that need to be addressed. Mr. Silva states that the septic system proposed is a chambered system primarily intended to not use the field system, which is why it is required to have a plan and an agreement. He states that the size of the tanks is sized appropriately based on the number of bedrooms. A septic plan is provided for further review. Mr. Silva adds that the state would not approve a septic system on this property if it was in collision with a well on a neighboring property or it did not meet the state's standards. He adds that this is in compliance.

Additional discussion ensues regarding the wells on site. Mr. George states that there are two pre-existing wells. Mr. Silva states that they will be terminating the dug well and the drilled well will remain in place. Mr. Naleid states that there is an agreement in place now for this new system to be serviced and he asks what is in place for the future to make sure that this system will always be maintained. Mr. George explains that there are conditions with the installer. Mr. Silva states that should the agreement be terminated, the installer will then notify the state. He states that the agreement was required to be signed before the state would approve the proposal.

Mr. Lavigne asks about the setbacks. Mr. Silva states that with a non-conforming lot the setback requirements are less than 20'. Ms. Smith states that the requirement is 12'. She explains that this structure exists now and can continue to be used, and since there is an approved septic design the applicants can install the system regardless if the variance is approved. She states that it is her understanding is that these are existing conditions for the area and nothing is changing for the 20' setback; however, the state requires a 50' from the water. She states that the proposal is to build on the same footprint, which was why the applicant was required to show where everything is now. She states that she and the building inspector did speak relative to the proposal to raise the property and the need for the variances. She states that there will be a walk-out basement and that is what required the variances as

there will be living space added and expands the use of what is there now. She states that the board does have to approve the measurements as the building inspector indicated that a variance is required due to the changes proposed.

Mr. Silva states that the shoreland permit has been provided. Ms. Smith notes that the setbacks to the water have not been met by the state or town. She states that the applicant is requesting the board to reaffirm measurements based on the concept of going up.

Mr. Lavigne states that the new foundation may be lower into the water table. He asks if the foundation could be moved back if they wanted to be to become more conforming. Ms. Smith states that this is an option to build on the footprint or move it. She adds that the non-conforming status would be lost if the foundation were to be moved and it would then need to be moved back 50' making them actually on Fiore Road. Mr. Silva states that there is a lot of ledge that would require additional blasting; they would prefer to avoid this option if possible.

Mr. Pender asks if the proposed septic design is aeration. Mr. Silva replies yes.

Mr. Pollock asks about the state reducing the radius requirement of 75'. Mr. Silva explains that the state has used their knowledge regarding to neighboring wells in relation to slopes. He adds that the state use to deny applications for wells that were uphill from a septic system, this has been changed and this chamber system is also less of an issue which is why it has been approved.

Mr. Naleid refers to a note on the septic plan indicating that the septic system is a failed system and he asks if the proposed septic system was designed as a replacement to a failed system. Mr. Silva replies that it was designed as a failed system as they are assuming that the system may not properly work due to its age. Mr. Naleid states that a failed system would impact the state's approval and it is better than what exists. Mr. Silva states that the state requested changes be made to the original approval because the structure was being torn down. He adds that the age of the system is unknown.

Mr. Pollock states that a new system is beneficial to the lake as many systems are antiquated and not running efficiently.

Variance to Article IV; Section (B)(2)(b) – Lot Size
<u>5 Variance Criteria</u>
1. Granting the variance would not be contrary to the public interest.
Mr. Silva states that granting the variance request will is within the spirit of the ordinance and is supported by other local residences that have been approved within the area as well as the town. He adds that the ordinance provides for

variances to be granted by the board for good reason and in their opinion thus far improvement of the structure for both health and safety is within the spirit of the ordinance.

2. The use is not contrary to the spirit of the ordinance.
Mr. Silva states that the variance will allow for the creation of an improved structure that is built to code, health and safety regulations also will be met. He notes that here are also access issues and the town is addressing access issues with RSA 674:41 criteria. He states that this will be a year-long residence, will be improved and overall, safer to the neighborhood.

3. Granting the variance would do substantial justice because:
Mr. Silva states that the variance will allow raising the structure slightly to accommodate a walkout basement and locate a second bedroom on the increased structure height proposed to be 7 ½ ft. He adds that the height increase will not block views of any neighbors and does not do any substantial harm to abutting properties. He adds that there are no abutters present. He states that the property owners did speak with the abutters prior to the submittal and this meeting to see if any accommodations were needed to be neighborly. Mr. George states that the abutters were in favor of the project and offered their assistance.

4. The proposed use would not diminish surrounding property values.
Mr. Silva states the project improves the area and may motivate others to create an improved structure which may limit the liability of the town by creating a building that meets all codes on their property.

5. Literal enforcment of provisions of the ordinance would result in an unnecesary hardship because:
Mr. Silva states that they have a non-conforming lot with a foundation issue that must be addressed. He states that they area trying to keep the project within the existing footprint and not create a more non-conforming structure on the property. He adds that this is primarily a seasonal home and will continue to be used as a seasonal home.

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the variance to Article IV; Section (B)(2)(b) for lot size based on the fact that all 5 criteria have been met.

Roll Call Vote:
Mr. Pollock – in favor
Mr. Lavigne – in favor
Mr. Pender – in favor
Mr. Naleid – in favor

Motion passes unanimously; 4/0.

Variance to Article VII; Section (C)(5) – Setbacks
Mr. Pender asks if there will be any changes to the existing setbacks. Mr. Silva replies that there will be no changes made; they will remain as they exist today.

Mr. Naleid states that the request is for a new foundation to be placed on the existing footprint. The board is not granting a side setback of 11.45' and 6.51, the board is allowing a new foundation to be placed where the existing structure is.

Mr. Naleid requests more details on the certified plot plan for each of the corners of the foundation and suggests a certified plot plan be provided once the new foundation is poured to make sure that everything matches. Ms. Smith replies that the board can require that the surveyor provide an as built plan showing the exact location. Mr. Lavigne asks if the board can list this as a condition and request that the pins be set at the corner points to verify locations. Mr. Naleid states that the plan would be stamped after the foundation is poured and the surveyor could pin the corners; the building inspector needs a stamped certified foundation plan after it is poured.

Mr. Silva states that there are not opposed to a certified plot plan if it were a condition of approval.

5 Variance Criteria
1. Granting the variance would not be contrary to the public interest.
Mr. Silva refers back to his prior comment for lot size and adds that they are proposing the improvements to be in the exact footprint and will maintain the exact footprint of the structure.

2. The use is not contrary to the spirit of the ordinance.
Mr. Silva refers back to his prior comment for lot size.

3. Granting the variance would do substantial justice because:
Mr. Silva states that raising the structure to accommodate a walkout basement and fixing the foundation. They are also maintaining within the setbacks of where the property is already built. He adds that if there is no effect to the neighbors now there will be no additional effect to the area or neighbors.

4. The proposed use would not diminish surrounding property values.
Mr. Silva states that the proposal is not encroaching into the setbacks further and there are no additional issues being created; they are proposing a new sound structure.

5. Literal enforcment of provisions of the ordinance would result in an unnecesary hardship because:
Mr. Silva states that they have an existing structure and maintaining the footprint; therefore, there will not be any negative affects to surrounding properties.

Mr. Naleid asks if the drip edge line will remain the same. Mr. Silva replies that the drip edge will extend out 4" on the 6.5' side. He notes that there are two different structures that were built at two different times so there are two different overhangs.

Mr. Naleid makes a motion, second by Mr. Lavigne, to grant the variance to Article VII; Section (C) for setbacks to replace the existing foundation with a new foundation on the same footprint, based on the fact that all 5 criteria have been met, with the condition that a certified plot plan is issued to building inspector once the foundation is poured.

Roll Call Vote:
Mr. Pollock – in favor
Mr. Lavigne – in favor
Mr. Pender – in favor
Mr. Naleid – in favor
Motion passes unanimously; 4/0.

Variance to Article IV; Section (B)(1)(b)(2) – Type of Frontage/Private Rd.
Mr. Lavigne Pender asks if the applicant would want to upgrade the road. Mr. Silva replies no.

5 Variance Criteria
1. Granting the variance would not be contrary to the public interest.
Mr. Silva refers back to his prior comments for lot size and setbacks, based on the existing structure.

2. The use is not contrary to the spirit of the ordinance.
Mr. Silva refers back to his prior comments for lot size and setbacks.

3. Granting the variance would do substantial justice because:
Mr. Silva states that his reply is similar to the prior comments for lot size and setbacks and adds that this is an improvement to health and safety for the neighbors and the lake as well.

4. The proposed use would not diminish surrounding property values.
Mr. Silva refers back to his prior comments for lot size and setbacks. He adds that they are not creating any additional hazards or moving the structure closer to the road.

5. Literal enforcment of provisions of the ordinance would result in an unnecesary hardship because:
Mr. Silva states that they have an existing structure on the property and are not proposing to move it closer to the road or lake if avoidable.

Mr. Pender asks if any other residents have improved the road in front of their own property to a Class V road. Mr. Silva replies no, not to their knowledge.

Mr. Pollock makes a motion, second by Mr. Lavigne, to grant the variance to IV; Section (B)(1)(b)(2) – Type of Frontage/Private Rd., based on the fact that all 5 criteria have been met.

Roll Call Vote:
Mr. Pollock – in favor
Mr. Lavigne – in favor
Mr. Pender – in favor
Mr. Naleid – in favor
Motion passes unanimously; 4/0.

Variance to Article IV; Section (B)(1)(C)(1) – Length of Frontage
Mr. Pender states that there is 60' of frontage on a private road where 150' of frontage is required. He asks if there is any way that the applicant can obtain additional frontage. Mr. Silva replies no.

5 Variance Criteria
1. Granting the variance would not be contrary to the public interest.
Mr. Silva refers back to his prior comments for lot size, based on the location of the existing structure.

2. The use is not contrary to the spirit of the ordinance.
Mr. Silva refers back to his prior comments for the variances and adds that they are not proposing to move this structure or build a new structure in a different location.

3. Granting the variance would do substantial justice because:
Mr. Silva states that with the current location and frontage the area is very tight. He states that the proposal is improving the safety of the building and is something that the town would prefer to see.

4. The proposed use would not diminish surrounding property values.
Mr. Silva refers back to his prior comments for the variances and adds that this proposal will not harm any abutting properties or the town.

5. Literal enforcment of provisions of the ordinance would result in an unnecesary hardship because:

Mr. Silva refers back to previous comments.

Mr. Lavigne makes a motion, second by Mr. Naleid, to grant the variance to IV; Section (B)(1)(C)(1) for Length of Frontage, for 60', based on the fact that all 5 criteria have been met.

Roll Call Vote:
Mr. Pollock – in favor
Mr. Lavigne – in favor
Mr. Pender – in favor
Mr. Naleid – in favor
Motion passes unanimously; 4/0.

Ms. Smith states that the planning board will be reviewing the 674:41 application this coming Thursday evening.

Mr. Pender explains the appeal process.

Other
Fees
Ms. Smith notes that she will be providing information relative to increasing the application fees for the March meeting.

Joint Board Meeting
Ms. Smith states that the selectmen have requested a joint meeting with the planning board and ZBA. She explains the planning board's role with the RSA 674:41 process and they are required to review and comment on every private road building permit that comes through. She notes that many do come thru to the ZBA as well and sometimes it is being done at the same time. She explains that the planning board has a concern about the private roads within Harvey Lake Estates specifically due to the fact that this area is all small lots with no association created or any type of maintenance agreement for these private roads. She states that the planning board recently reviewed an application for this area and commented to the selectmen to not approve any more building permits in the Harvey Lake Estates area until an association for maintenance of roads is created. She states that the state statute also requires the selectmen to approve building permits on private and Class VI roads and the planning board and selectmen are concerned with this area because of the small lots and the fact that these roads are in rough condition.

Mr. Lavigne understands the concern of the selectmen as this puts the town at risk with safety issues. Mr. Pollock asks why they are focused just on this area. Mr. Lavigne notes that the roads in this area are in very poor condition in some spots.

Discussion ensues. Ms. Smith states that when this issue began it was enforced by being tied to the 1,000' mark of the planning board's subdivision regulations, which requires that you cannot build a new road with a single access point longer than 1,000 ft. She states that a public hearing was held; a policy in place that was never adhered to and new criteria has been developed.

Ms. Smith explains that planning board members have a concern about the number of variances that are granted for undersized lots and other items that are far from the standards. She states that variances are intended to be exceptions for unique circumstances and pre-existed. She states that another board may see that the voters put in requirements for lots 40+ years ago and it was change to 2 acre lots in the 1990's. She states that when an ordinance is put into place it is for everything and does not grant rights beyond what existed at that point and time. These lots were existing. She explains that the ZBA has authority to look at these issues with many vantage points. She states that this board takes into consideration updated structures, water quality issues, new septic systems; however, the lots in the Harvey Lake Estates are very small and do not meet many of the requirements. She states that she feels that the selectmen would like to understand the roles of the planning and zoning board relative to road frontage.

Further discussion ensues regarding the spirit of the ordinance and how the ZBA conducts their review process to grant variances. Ms. Smith states that the statute requires the homeowner to sign a waiver agreement for labiality that there is no obligation for the town for access to their property. Mr. Naleid suggests that the town write a special exception for a lot without frontage with criteria that there is a road association in place; requirements to be met could be added as well. Ms. Smith states that would be an option.

Ms. Smith also notes that there is also a special exception option now for non-conforming lots; a lot that was pre-existing can be built based on prior to December 31, 2005, lot that is under 80,000 sq. ft. She reads the ordinance noting septic requirements, well radius, and setbacks. Discussion ensues.

Further discussion is held. Mr. Naleid states that the town will be forcing the creation of associations for developments on private roads and taking the liability from the town. Mr. Pollock states that this issue is all over town and within the lake areas not just within Harvey Lake Estates. Mr. Lavigne states that it is not easy to be fair and the ZBA must deal with each and every issue and on individual basis. He states that this area was create 40 years ago and now must be dealt with. Mr. Pollock states that these new houses are a drastic improvement to the area. Ms. Smith states that this board must wrestle with the issues of new buildings, septic system, wells, water quality, etc.

Ms. Smith states that the planning board and zoning board each have very different roles. She feels that this meeting will be good for all to become informed and understand. Mr. Pender suggests that the conservation commission be included in the joint meeting.

Mr. Lavigne makes a motion, second by Mr. Naleid, to adjourn. Motion passes unanimously at 7:51 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary