

**Town of Northwood
Zoning Board Adjustment
March 28, 2016**

Chairman Roy Pender calls the meeting to order at 6:30 pm

PRESENT: Chairman Roy Pender, Doug Pollock, Curtis Naleid, Matt Fowler, Alternate Thomas Johnson.

Visitor: Planning Board Chairman Robert Strobel

VOTING DESIGNATION: All present are voting members.

Chairman Pender welcomes new alternate member Thomas Johnson to the board.

MINUTES: Motion is made by Curtis Naleid, second by Doug Pollock to postpone action on the minutes until the next meeting. Vote: 5/0.

ELECTION OF OFFICERS:

Motion is made by Curtis Naleid, second by Thomas Johnson to nominate Roy Pender as chairman for the coming year. Vote: 4/0/1 Mr. Pender abstains.

Chairman Pender asks if anyone is interested in serving in this capacity as the current vice-chairman will be moving out of town this year. Discussion is held on the role of vice-chair.

Motion is made by Matt Fowler, second by Thomas Johnson to nominate Curtis Naleid as vice-chairman. Vote: 4/0/1 Mr. Naleid abstains.

Appointment to Selectmen Subcommittee: Chairman Pender states that he is willing to serve on the subcommittee and asks if anyone else is willing to volunteer. Mr. Pollock states he is willing to commit the time to the committee. Motion is made by Curtis Naleid, second by Matt Fowler to recommend Mr. Pender and Mr. Pollock to the selectmen. Vote: 5/0.

Staff Changes: Chairman Pender notes that Lisa Fellows-Weaver has resigned her position with the town and has accepted a position with the City of Concord. Chairman Pender reads a note from Ms. Fellows-Weaver stating her enjoyment in working with the board over the years.

Small lots: Chairman Pender asks for comments/ideas from the board regarding the issue of small lots. He adds that he has a concern that not granting variances could result in being considered a taking. Mr. Naleid states he has been doing some research and notes NH RSA 674:19, applicability of the zoning ordinance, and reads the statute. He notes the differences between lots that have existing structures and undeveloped lots. Discussion is held on the fact that these lots were created as "camp lots" and it is noted that the zoning board had a discussion last year on seasonal lots/structures and whether the board has the ability to restrict as such. Mr. Naleid brings up the concept of setting up village districts and whether this may be a viable option.

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He adds that strong language added to the zoning ordinance may assist the board in being able to restrict development on small, undersized lots. Discussion is held on takings and the fact that lot owners have been taxed for many years. Ms. Smith states that there is a misunderstanding that all undersized lots have been taxed as full value building lots, which is not the case. She states that there is currently a 2 acre/ 150 ft. frontage requirement in the zoning ordinance for lot development. She notes that the task for the zoning board is to look at many different applications and then effectively apply the criteria the state has set in order to grant relief. She states that the board should look at each case meeting the criteria against the standard in the zoning ordinance and typically the standard should be very close. She adds that it may not be reasonable to consider it to be “a taking” when the lot is 1/10 of an acre with no frontage and the standard is 2 acres and 150’ of approved road frontage. Further comment is made on the matter of fairness and properties that have been in the same family for many years, which has influenced the board’s decisions in the past. Ms. Smith notes that there has been a minimum lot size standard for over 30 years. She adds that many of the small lots are now being purchased and developed solely for re-sale. She acknowledges the board efforts and notes that a lot of time is spent going over each case to review whether it fits the criteria for the variance; however, it is not necessary or required that the board approve any case unless the criteria has been met. Ms. Smith states that one of the other issues that has affected the zoning board over a period of years is that the state or courts have changed the criteria the applicant must meet in order for the board to approve a variance (Simplex, Boccia, etc), noting that the most recent court case has relaxed the criteria from the previous standard. She notes that the burden is always on the applicant to meet the criteria. Further comment is made on past history of the board’s approval record, noting that the approvals should be the exceptions, based on being a unique situation that separates the property from all others that are held to the standard in the zoning ordinance. Ms. Smith states that the interest to further review small lots in a subcommittee does not indicate a lack of support for the zoning board’s authority to review the cases based on its role and responsibilities; however there is concern over the disproportionately high number of approvals over a period of time, and the planning board’s recognition that the voters adopted the 2 acre/150 ft. frontage ordinances. She adds that the planning board looks at the cases they have from a different perspective and often hears from the public that they want protection of lakes, reduction in environmental impacts, long term viability of lots next to each other, protection of emergency personnel going to calls, etc.

Ms. Smith states that the selectmen receive and act upon applications for building permits under RSA 674:41 on many of the lots which have access from Class VI and private roads. In most cases, they act on these applications after the zoning board has granted variances or special exceptions, and

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following review and comment by the planning board. The selectmen have adopted their own procedures for this process and there often is a direct conflict with the decisions granted by the zoning board and/or planning board. Ms. Smith adds that she believes that the other two boards (planning and BOS) hope to get a better understanding of the zoning board's decision making process. Additional discussion is held on the interest in forming an advisory subcommittee, including to better understand all aspects of the decision making process to better serve the public wishing to build or develop property. Chairman Pender opens discussion on the issue of taking and where the board stands legally relative to decisions and takings; can the board be held liable. Ms. Smith states that it is her understanding that if an applicant is denied relief from the zoning ordinance because they do not meet the criteria for a variance, it is not considered a taking. She adds that there may be other uses for the property such as passive recreation. She recommends that the board get a legal opinion regarding their concern.

Mr. Naleid brings up the issue of neighborhoods that have been developed where the majority of lots are all very small. Discussion is held on the difference between new lot creation and undersized lots that have existed for a long time, some with aging structures/camps. Mr. Pollock states that he spoke with Chris Northrup at the NH Office of Energy and Planning. He asked Mr. Northrup if other towns have this problem and what ways are best to address small lot development. Some of his suggestions included regulating residential density, structure to structure setbacks, or creating overlay districts around lakes with regulations aimed at protecting the lake as a valuable natural resource. Mr. Pollock notes the need to protect the lakes in Northwood for other reasons including the tax base.

Mr. Johnson asks about the history of how these lots were created. Ms. Smith states that many of these subdivisions were created in the 1940's-early 1960's. Many of the structures that were placed on them were camps intended for weekend or vacation use, or tents.

Discussion is held on structure separation; Mr. Strobel notes the current setback would create 40' minimum between structures. It is noted that on small lots, the setback is reduced, which would reduce the structure separation; also, that many lots have non-conforming structures close to lot lines. Discussion is held on the ability for fire and emergency personnel to access properties and structures. Further discussion is held on village districts, how they are set up and how they function. Another matter discussed is community wells and community septic systems and pursuing grant money such as Community Block Grants to be able to fund these types of projects in more densely populated areas around the lakes. Mr. Pollock

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mentions the public water system in the gulf area (Gulch Acres) that is only seasonal water supply.

Curtis Naleid suggests reaching out to Attorney Callen to get his advice/direction if the board is starting to change course and possibly be denying more applications, to be sure we are covering what we need to. Chairman Pender states he is in agreement. Ms. Smith suggests inviting him to meet with the board at a meeting for an information session. Discussion is held on whether or not there is any reason to not have the discussion in public. Mr. Pollock suggests having Mr. Northrup from OEP to attend the subcommittee meeting for additional input. It is requested to notify the entire ZBA & PB for all subcommittee meetings, should they have interest in attending and listening to the discussion. Mr. Fowler asks if it would be appropriate to have an alternate for the subcommittee as he would be willing to volunteer. Discussion is held on the merits of having an alternate should either person not be able to attend. **Motion is made by Roy Pender, second by Doug Pollock to recommend Matt Fowler as an alternate to the subcommittee. Vote: 4/0/1.** It is noted that it is a recommendation and it will be up to the selectmen as to whether there will be alternates. **Motion is made by Doug Pollock, second by Matt Fowler to bring Attorney Callen in to the next meeting as a consultant at the next meeting on Monday, April 25. Vote: 5/0.** It is agreed that if there are applications they will be scheduled to start at 7:30.

FEE CHANGES: Ms. Smith states that the application fees are not keeping pace with the cost of public notices. She notes that we use the Suncook Sun routinely but occasionally have to use a daily paper in order to accommodate deadlines. Fosters Daily Democrat now charges for addition of online ad with every print ad and the minimum is in the range of \$130 compared to \$60-100 for Suncook Sun. She states that we currently only charge a flat \$110 application fee, plus \$10 per abutter and the \$25 recording fee for the notice of decision. Ms. Smith states that some applications may contain numerous requests (multiple variances, special exceptions, etc.) which increase the cost of the public notice over an application of a single variance. She suggests the board consider charging a flat public notice fee with extra fee for each additional request. Curtis Naleid asks about the possibility for providing a refund. Ms. Smith states there is no process in place that allows us to refund money once a check has been cashed. Additional discussion is held on the staff time involved in processing an application, including public notice, abutter notification, copying of information, and minutes. Mr. Johnson asks what other towns charge. Ms. Smith states that she can check with other communities if the board is interested. She notes the fees for planning board applications and that a separate public notice fee is charged. Additional discussion is held and

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Mr. Naleid suggest \$75 public notice fee, with \$25 per additional item, and \$150 for application.

Curtis Naleid makes a motion, second by Thomas Johnson second by to recommend the following fees: \$75 base public notice fee and \$25 for each additional request for relief; \$150 application fee; \$15 per abutter; and \$25 recording fee (no change). Vote: 5/0. Ms. Smith will inform the selectmen and will notify the board when the date has been set for the public hearing.

Discussion is held on whether the board should start a search for members or alternates due to the upcoming departure this year of long time member Tom Lavigne. It is agreed that we should wait until the need for a new member is present as we currently have full membership and three alternates.

Ms. Smith notes that Mr. Pollock is the only member whose appointment expires this year. **A motion is made by Chairman Pender, second by Curtis Naleid to send a letter to the selectmen recommending Doug Pollock to be re-appointed to the zoning board. Vote: 5/0.**

Ms. Smith states that she has ordered a digital download of the most current Zoning Board Handbook and will print out for members. Some members request receiving it as an e-mail only.

Discussion is held on upcoming training sessions. Ms. Smith states that the OEP workshop has been rescheduled to June and she will send out the information when it is received.

Motion is made by Curtis Naleid, second by Matt Fowler to adjourn at 7:58 pm

Respectfully submitted,

Linda Smith

Linda Smith, Board Administrator

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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