

**Town of Northwood
Zoning Board Adjustment
January 26, 2015**

Chairman Roy Pender calls the meeting to order at 6:30 p.m.

PRESENT: Chairman Roy Pender, Curtis Naleid, Alternate Matthew Fowler, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

ABSENT: Vice-Chairman Tom Lavigne, Bruce Farr, Doug Pollock, and Alternate Robert Bailey.

VOTING DESIGNATION: Roy Pender, Curtis Naleid, and Alternate Matthew Fowler.

Mr. Pender states that there is only a three member board this evening. He explains that any decisions that the board makes must be unanimous decisions. He states that the board can proceed with three members at the applicants request or the applicant can request a full board, which the meeting would be postponed until next month with a five member board.

Chris Berry of Berry Surveying and Engineering is present along with the applicant Duane Helton, and Wetlands Scientist Mark Jacobs. Mr. Berry asks if the board were to request additional information from the applicant in order to make a decision would the meeting be continued. Mr. Pender replies yes, which has been the board's past practice.

Ms. Smith states that it has been brought to her attention tonight that one of the five criteria for the special exception has not been met; the wetlands permit has not yet been approved by NHDES. She states that if the board does proceed and the case is conditionally approved tonight, she suggests the case be continued to the board's next meeting, February 23, 2015, so it can be made certain that the wetlands permit is secured. She adds that it is the intent of the applicant to proceed with a subdivision application to the planning board for February 26.

Mr. Pender asks if the applicants would like to proceed with a three member board. Mr. Jacobs, Certified Wetlands Scientist, requests to proceed with three members.

MINUTES:

December 22, 2014

Mr. Naleid makes a motion, second by Mr. Fowler, to approve the minutes of December 22, 2014, as written. Motion passes unanimously, 3/0.

NEW CASE:

Case #15-01: Duane Helton, 124 Allen Farm Rd. Map 220, Lot 12.

Applicant seeks a special exception to Article VI, Section (A)(4)(a) to

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construct a new driveway within the Wetlands Conservation Overlay District.

Mr. Jacobs provides an overview of the property. He explains that the property is a 4.59 acre lot located on both sides of Allen Farm Road, which is a loop road. The lot also has frontage along Rte. 202A. He adds that the existing home has a garage. The plan will be to subdivide this lot into two lots. He states that there is an existing driveway off of Rte. 202A in the middle of a curve. He explains that due to sight distance conditions a new driveway is being proposed for the new home onto Allen Farm Rd. He states that this will involve two crossings one with 1,834 sq. ft. and the other with 1,885 sq. ft., for a total of 2,719 sq. ft. of wetland impact, which qualifies as a minimum impact project.

Mr. Jacobs speaks to the drainage. He explains that the drainage will be maintained. The proposal is for a 12" culvert to be installed at the first crossing with two additional culverts of 15" at the second crossing. He explains that the existing drainage flows onto the property now through a 21" reinforced concrete pipe. The 21" culvert is not available anymore and to keep the footprint down as well as minimize the wetland impacts, they are proposing the two 15" culverts. He adds that this will reduce the coverage over the pipe, will not elevate the driveway, which serves to reduce the impacts. He states that they are proposing 2:1 side slopes, which will also minimize impacts. He states that they have gone to great lengths to minimize the impacts. He explains that there will be proper erosion controls in place during construction and these will be maintained until the side slopes are stabilized with loam and seed.

Mr. Jacobs reads the requirements for the special exception, as follows:

USES ALLOWED BY SPECIAL EXCEPTIONS

Special exceptions may be granted by the Board of Adjustment, upon notice and hearing as prescribed in RSA Chapter 676, for the following uses within the Wetlands Conservation Overlay District and its setbacks:

(a) Those uses essential to the productive use of land not within the Wetlands Conservation Overlay District shall be allowed by Special Exception. Those uses include, but are not limited to: the construction of roads, other access ways, utility rights-of-way and easements, including power lines and pipelines, with adequate provisions where called for, for the continued, uninterrupted flow of surface run-off water. The ZBA shall grant a Special Exception, provided the following are met:

[1] After the applicant meets with the Conservation Commission, findings by the Northwood Conservation Commission regarding the proposal are submitted with the Special Exception application, are reviewed by the ZBA,

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and are made part of the record of the case;

Mr. Jacobs states that they did meet with the conservation commission and their comments were to be provided. He states that the commission supports the project.

The Northwood Conservation Commission (NCC) supports the special exception for the project, as proposed, with the recommendation of a condition in order to meet the purpose and intent of the Wetlands Conservation Overlay District: to restrict the driveway to remain a pervious surface from the street to a distance up to edge of the northern most wetland buffer north of wetland impact #2.

[2] Dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setbacks, even if this requires adjustments in design outside of this overlay district;

Mr. Jacobs states that he has addressed how they are proposing to minimize the impacts.

[3] There shall be provisions made to restore the site as nearly as possible to its original grade and condition; (Rev. 3/01)

Mr. Jacobs states that he believes that this criteria is directed towards temporary impacts for projects that will be restored in place and would not be applicable.

[4] A state wetlands permit shall be obtained when required.

Mr. Jacobs states that he understood that the permit only needed to be submitted, not received. He states that an approval has not been received, to date. He notes that the conservation commission has recommended approval of the project.

[5] A Special Exception is not required when the use meets the criteria for a permit by notification as defined by the NH Wetlands Bureau Code of Administrative Rules. (Rev. 3/00) (Rev. 3/05)

Mr. Jacobs explains that this project does not qualify for a permit by notification (PBN) therefore; this criteria is not applicable.

Mr. Jacobs states that he believes that the criteria meets the criteria for an approval for the special exception.

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Mr. Jacobs states that the reasoning for the proposed location for the new driveway is because of poor sight distance. He states that the speed limit on this road is generally not adhered to making the situation worse. He states that a driveway on a town road on a new lot is required to be 100 ft. from a state highway; Rte. 202A, and the proposed driveway is approximately 150 ft.

Mr. Pender asks if the driveway will be paved. Mr. Jacobs states that they are not proposing to pave the driveway.

Mr. Pender indicates that there are abutters present.

Abutter Don Manter states that the project seems to be a low impact; however, he expresses concern with the wetland impacts. He notes that he was concerned with having the conservation commission's recommendation. He mentions the drainage at the end of Allen Farm Rd. and expresses concern with any additional clearing proposed as it could change the water flow.

Mr. Jacobs shows the proposed property line and adds that the driveway is a very minimal surface area and will have minimal impact to the current drainage patterns. He adds that any existing drainage will be maintained by the existing culverts.

Mr. Helton adds that the existing logging road is being used for the driveway and will be a minimal impact. He states that the proposed house area has already been cleared.

Mr. Jacobs states that there will be minimal tree clearing for this proposal. He adds that they are trying to make use of an existing skidder trail that goes through the area.

Mr. Manter asks about the driveway location being on the property line and asks what the side lot setback is for lot lines. Mr. Berry replies that the setback is 20'.

Mr. Pender states that the 20' setback includes paving. Mr. Naleid states that this is not an issue for this board to address as it is not being proposed.

Mr. Jacobs states that they have applied for the wetland permit to the state and there is no approval issued, to date. He adds that they feel that this is a minimum impact and 2,700 s.f. is reasonable to be expected to be approved. He states that the driveway is more than 20 ft. from the property line. He states that the reason why the property line is proposed where it is is due to the existing wetlands locations and the need for contiguous buildable area for the future construction.

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Mr. Helton states that this is the narrowest point of crossing to minimize the wetland impacts.

Mr. Berry states that there may need to be a change to move the lot line from the driveway to meet the 20' setback. He explains that the original lines were drawn in an effort to reflect the state's requirements in a wetland. He states that in Northwood a driveway is a structure and this may need to be amended.

Mr. Naleid asks for clarification regarding the timing of the permit approval and the application submission to the planning board. Ms. Smith states that the conservation commission recommended that the driveway not be paved up to a certain point and because the wetlands permit has not been received the board would need to make a conditional approval that the permit be obtained. She is suggesting that the board set a deadline for an additional month for the applicants to receive their approvals prior to the planning board meeting. Should the approval not be received, the ZBA would know that by their next meeting. She explains that if the applicants go forward to the planning board and the condition not met it could delay the application process for the planning board.

Mr. Pender refers to the small crossing with the one 12" culvert and asks what is beyond the property. Mr. Jacobs states that they did not continue on past Mr. Helton's property. However, it appears that there is a small watershed area and the proposed 12" culvert will be able to handle the flow.

Mr. Jacobs refers to the pictures provided and a brief discussion is held as to the specific locations and the areas of the pictures.

Mr. Naleid asks if the applicant is aware of the conservation commission's recommendation to not pave the driveway beyond the wetland buffer, north of wetland #2. Mr. Helton replies yes and adds that he does not have any issues relative to that condition. A discussion is held regarding the condition remaining should the property be sold. Mr. Pender states that this is a condition of the special exception. Ms. Smith states that the Notice of Decision is also recorded at the registry of deeds. She adds that the condition is applied to the property not to the owner.

Mr. Naleid makes a motion, second by Mr. Fowler, to grant the special exception based on the fact that all criteria has been met with the condition that the NHDES wetlands permit be received and submitted to the ZBA prior to February 23, 2015, and the recommendation of the Northwood Conservation Commission be adopted to restrict the driveway to remain a pervious surface from the street to a distance up to edge of the northern most wetland buffer north of wetland impact #2.

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Mr. Jacobs expresses concern with the timing of the permit from NHDES and the condition applied. He states that there is a chance that the permit may not be approved by NHDES for the meeting in February. He adds that it is unclear as to why the board could not conditionally approve the special exception application pending eventual permit approval from NHDES. Ms. Smith states that approval for a special exception from the ZBA must meet the five criteria. She adds that the planning board requires relief from the ZBA prior to processing an application. Ms. Smith states that in order to allow more time for the wetlands application approval, the applicants could request a continuance to February 23.

Mr. Berry states that the State of NH has 30 days to approve or deny the wetland application. He states that NHDES has deemed the application administratively complete on January 23, which gives the reviewer exactly 30 days to review the application. He explains that the conditional approval for the special exception is putting them in a position to reappear before the ZBA at a later date when they are confident that they will receive approval for the permit. He adds that even on the 30th day they still may not have the approved permit. He adds that he does understand the requirements of the planning board and the fact that they may not want to process the application; however, with the ZBA's conditional approval they would still be able to file the planning board application and they could postpone at that time, if applicable.

Ms. Smith states that with an open ended condition relative to the permit, the board is creating a conditional approval with no end for something that should have been received with the application when it was submitted; it is a requirement of the special exception that the permit be obtained. She states that Mr. Berry is correct in the sense that if the approval is not obtained by the time of the planning board meeting, then the planning board can determine that the application is not complete the case to another date and time.

Mr. Fowler asks if the condition could be amended to receive approval by February 25.

Mr. Naleid amends the motion, to change the due date for the approved permit to be delivered to the ZBA not later than 2/25/15. Mr. Fowler seconds.

Roll call vote: Motion will amended date passes unanimously; 3/0.

OTHER

Court Case Update

Ms. Smith states that the court decision has been received and the board's decision was affirmed. She states that she has emailed out the court's decision to members.

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Mr. Naleid states that the judge did recognize the backup statements made by the board members regarding re-hearing cases. He states that he feels that it is important to back up the board's decisions.

Mr. Pender agrees and states that the board's decisions need to be justified and conditions needed to be included with the motions.

ADJOURNMENT

**Mr. Naleid makes a motion, second by Mr. Fowler, to adjourn at 7:05 p.m.
Motion passes unanimously; 3/0.**

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary