

**Town of Northwood
Zoning Board Adjustment
August 24, 2015**

Chairman Roy Pender calls the meeting to order at 6:31 p.m.

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

ABSENT: Alternate Robert Bailey

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

MINUTES:

June 22, 2015

Mr. Pollock makes a motion, second by Mr. Fowler, to approve the minutes of June 22, 2015, as written. Motion passes unanimously, 5/0.

Case #15-04: Seth Alie, 113 Old Mountain Rd. Map 235, Lot 25. Applicant seeks a variance to Article IV.B. Section (4)(b) of the Northwood Development Ordinance to construct an addition within the 20' setback.

Seth Alie is present along with Ron Alie. Seth Alie gives permission for Ron Alie to speak to this project. Ron Alie states that he took the pictures and drew the drawings. He states that a variance is requested to permit a bedroom and bathroom addition to the east side of the existing house, which is inside of the 20' setback of the side lot line on the east side of the property as noted on the surveyed plan included. He explains that when facing the house, the left side of the house faces east. In reference to the project he will reference the project as the east addition. Photographs of the project are reviewed.

Ron Alie states that the property has been surveyed. The house size is 26'x34' and the east addition is 14' x 24'. There will be a 2' setback on the front, 14' to the east and run the gable end on the east side.

Ron Alie explains that there are multiple reasons they are requesting variances. He states that there is a wetland on the west side of the property. Another issue is the distance from the well to the septic, noted in the plan. He adds that to add a septic system or a bathroom on the west side of the house would require adding a septic tank in front of the house another 30' and pumping it to the existing tank in front of the house for the west addition. Doing this project on the east addition is more efficient as all of the plumbing is on the east side and is where the septic system is located. He refers to the pictures.

Ron Alie states that if the variance is granted the addition would be on the east side and consist of a bedroom and bathroom. This would allow them to tap into

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the existing and approved septic system. He adds that the septic system is approved for three bedrooms. Currently the house is two bedrooms and one bathroom.

Ron Alie explains that building the addition on the west side of the house would not be a logical approach. He adds that they would also need to cross the power feed to access the septic tank.

Ron Alie explains the 14' addition onto the east side of the house; it will bring it the side setback to 7' at the narrowest point to the lot line and about 14' at the farthest point. He adds that the property line is diagonal. He further explains the boundary lines of the property. He states that the closest point after the 14' addition is 7.8 ft.

New documents are provided showing the existing house and the potential two additions.

Mr. Naleid asks about the option of adding on to the back of the house. Ron Alie replies that adding on to the rear of the house would require redoing the roof. It would require an engineer to determine if they would be able to tie into the trusses on the existing roof. He states it could be done but is not an economical way to add on to a ranch. He notes that there is a chimney also on the back of the house in the room that runs the furnace system. He adds that the existing bathroom is in the center of the house and adding on to the rear of the house would require the bathrooms to be back to back. He states that it could be done.

Mr. Naleid states that the addition off the back creates two valleys with a perpendicular roof coming into it. He asks, other than the expense of redoing the roof are there any other issues. Ron Alie replies that the chimney is there where the roof line would be proposed.

Mr. Lavigne asks if there are two additions being proposed but only one that the ZBA must address. Ron Alie replies yes. He states that the other addition is noted for explanation only because of the wetlands. Mr. Lavigne notes that the lot size is large but is narrow. Mr. Alie states that the lot is oddly shaped and narrow, the majority of the land is to the right and 1/3 of the frontage is to the wetland. He adds that they have checked with NHDES and there are no issues with the wetlands.

Mr. Pollock asks if there is a well. Ron Alie explains that there is a well and is 32' to the rear corner of the right side of the house.

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Mr. Pender asks if there are any abutters present. There are no abutters present and no interested parties.

Mr. Pender refers to abutter Jim Hadley's letter supporting the project.

A discussion is held regarding the septic system. Ron Alie states that there is an approved septic system that is approximately 16 years old. It is approved as a three bedroom system. Mr. Naleid asks how many bedrooms exist and Ron Alie replies two. Mr. Naleid asks how many bedrooms are being added and Ron Alie replies one additional bedroom.

Mr. Lavigne states that the actual amount of the encroachment is different at the front than at the back. Ron Alie states that the encroachment is 7.9 ft. on the front and 14' in the back. He states that it was his understanding that they needed to prove the closest distance and that is what the board would be voting on. He adds that the drawing designed by the surveyor does show the angle. Mr. Lavigne asks if the distance from the lot line will be 12' 6" from the lot line on the front. Mr. Alie agrees that it is a 12' 6" encroachment into the setback.

Variance to Article IV; Section (B)(4)(b)

5 Variance Criteria

1. Granting the variance would not be contrary to the public interest.

Mr. Alie states that the public interest for water runoff, safety from hazards, view, obstructions, environmental concerns, and sunlight to the public would not be changed with the proposed addition to the east side of the house. There would be no change to the existing slope or natural pitch of the land, which empties any runoff of water onto the applicant's property. The boundary line is a mixture of mature soft and hardwood trees. The slope of the land from the boundary line toward the abutter to the east is uphill with a two-story, unoccupied structure at the height of land in line with the abutter's home, which is downhill and to the east of the unoccupied structure, which obstructs this landowners view of the applicant's existing home and proposed addition. To the east there is a slight uphill slope to the boundary line at this location. He explains the pitch of the land from the road; front to back of the property line, starting from the front corner of the proposed addition drops 14½ inches to the rear corner of the proposed addition. Ron Alie continues and explains that from the rear corner back another 20', the pitch drops another 10". A test dig was done to the east side starting from the front corner of the existing house to determine the existing footing. Test ditches were also done at the front and rear most easterly corners of the proposed east addition. At the depth of what would be the footings of the proposed addition, (same height of existing house) no live roots from trees were found. There were a few rocks and rotting roots from what was believed to have been from the original foundation dig.

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The distance from the well to the proposed west addition is 32'. The distance of the well from the rear easterly corner of the existing house is 48'.

2. The use is not contrary to the spirit of the ordinance.

Ron Alie states that the spirit of the ordinance is to protect the privacy, spatial distances, and environmental concerns of the abutters. This bed and bath proposed addition, although inside the 20' side property line, does not reduce the privacy or compromise the spatial presence of the abutters. The slight downhill slope of the applicant's property toward the east property line goes slightly uphill before reaching the property line. The intent is not to alter the grade, hence protecting and maintaining the environmental integrity, the existing natural topography, and the quality of life to the applicant and the abutters.

3. Granting the variance would do substantial justice because:

Ron Alie states that granting the variance would provide an additional bedroom and bathroom to the existing structure. The existing structure has two bedrooms and one bathroom. One bedroom is an 8' by 9' room with a closet. The house has an existing septic system approved for three bedrooms. An addition onto any other side of the existing house would require a new septic system or pump up system to be added due to the current plumbing or the existing approved system.

4. The proposed use would not diminish surrounding property values.

Ron Alie states that the property value of this two bedroom, one bathroom home compared to the proposed additions making it a true three bedroom, two bathroom home would dramatically increase the value of this property. It would also make the property consistent with the homes in the neighborhood adding to their values as well. If the variance is granted it should add to the marketability of all the homes in the neighborhood. He refers to pictures provided showing some of the houses on the same side of the road leading up to the applicant's house.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

The special conditions of this property that distinguish it from other properties in the area are as follows:

Ron Alie states that the location of the existing home, the angle of the property lines, the location of the septic system, the well, and power supply locations, combined with the drainage on the west side of the property create the special conditions to this property as noted in the survey, septic plan, and photographs, which were included at time of filing.

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(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

Ron Allie states that the general public's interest in the variance is not impacted by this request as there is no change to the natural drainage, water supply, the safety, the air quality, the noise level, or any other environmental issues, the view or obstructions to an existing abutter or general public. The proposed addition encroaches on the side lot line set back requirement but no removal of boundary trees is required or any topographical changes to the boundary.

(ii) The proposed use is a reasonable one because:

Ron Allie states that if this building and septic system were to be placed on a lot with no lot side line variances needed the side you would select is the east side due to plumbing, septic, and ability to comply with the law, and codes for the proposed east addition. He adds that it would also eliminate the 8' x 9' bedroom described and make it an entrance and closet to the new proposed bedroom and bathroom on the east addition.

Mr. Lavigne expresses concern with the neighbor's structure that is very close to the line. Ron Alie refers to a picture and explains that the structure is an unoccupied, two-story high structure between the neighbor's home and the existing house and/or proposed east addition that they are requesting the variance for. He further explains the topography of the land. Mr. Lavigne asks how far away this unoccupied building is from the lot line. Ron Alie replies that it is 20' – 25'; closer to 25 ft. He refers to the blazed trees on both sides and adds that these trees will stay. Mr. Lavigne asks if the blazed trees are the lot lines and Ron Alie replies yes. He adds that these trees are mature trees and when the test pits were done they went through fine; nothing will destroy the environmental conditions with this proposal.

Mr. Pollock refers to the certified plot plan and suggests that the lot dimension from the far side be added to the plot plan as well. Mr. Alie states that they understood that they only needed to provide the most encroaching distance; however, he will comply with any modifications necessary to satisfy the board. Mr. Lavigne states that they have provided a certified plot plan, as required; it is a town approved lot on a town approved road.

Ron Alie explains that when the town re-did Old Mountain Road the iron pin was removed. In reviewing survey the frontage is over 170' and eliminated the need to request a variance for road frontage. He adds that they have reset the

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stake to the west and did find the drilled hole in the rock to the east to confirm the front boundary line to create the certified plot plan that was submitted.

Mr. Naleid states that the frontage on Old Mountain Road is 177.9' and Mr. Lavigne states that to the back it is shown to be 204.35'.

Mr. Pollock states that there is still the requirement for a certified plot plan if the setbacks are being diminished. Ms. Smith reads Section IV(b)(4) regarding determinations of a setbacks. Ron Alie asks if anything else is required. Mr. Pender states that the maximum encroachment is 12' 3".

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the variance to Article IV; Section (B)(4)(b) for an encroachment of 12'3", based on the fact that all 5 criteria have been met.

Mr. Fowler states that he feels all five questions were answered appropriately.

Mr. Lavigne commends the applicant with the fact that they are protecting the wetlands and water runoff that they and were concerned with protecting the environment.

Mr. Naleid states that he appreciates the simplest and most straight forward addition; however, the house is now 2' away from the setback and it is a 5 acre lot. He states that if we were not pursuing a 20' setback then there would not be nice wooded neighborhoods, which the town does put effort in maintaining and encouraging. He adds that there is another option available, which is to place the addition on the back side of the house and it would not require a variance. He states that it may require more work and some creativity; however, it could be done. He states that he finds it difficult to overlook this option and approve an encroachment of 12' on a large lot, despite the wetlands on the west side.

Mr. Lavigne states that he understands Mr. Naleid's comments; however, the house location is unique as it is very close to one lot line and so far away from the other. He states that the house location may have been done specifically to avoid the wetlands. He adds that the proposal is a large encroachment; however, with all things considered, it is the most cost effective option and he feels that the proposal is the least disruptive.

Seth Alie stated that they did meet with the abutters and explained the proposal. He noted that the tree buffer will not be removed.

Mr. Pender states that he agrees with Mr. Lavigne as this proposal is the most cost effective option and the least disruptive.

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Roll Call Vote:

Mr. Fowler – in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – opposed

Mr. Pender – in favor

Motion passes; 4/1. Mr. Naleid is opposed.

Mr. Pender explains the appeal process.

Case #15-05: Bruce & Cheryl St. Hilaire, 18 Cheryl Lane. Map 116, Lot 17.

Applicants seek the following variances from the Northwood Development Ordinance, to permit construction of a seasonal camp: Article IV.B. Section (2)(b): lot size is 0.39 acres where 2.0 acres is required and Article IV.B. Section (1)(b)(2) type of frontage-private road & Article IV.B. Section (1)(c)(1) length of frontage.

The St. Hilaries are present. Ms. St. Hilaire distributes an updated packet with designs of possible structures and pictures of the neighborhood.

Mr. Pender states that each variance request will be a separate item.

Mr. Pender asks if there are any abutters present for this case. No abutters are present.

A discussion is held regarding the private road status. Mr. Pender reads from the zoning regulations regarding the maintenance of private roads. Ms. Smith states that the applicants are seeking a variance for them not to be required to upgrade the road to the minimum design standards for a rural road in front of their property so that they will not need to upgrade that section of road in order to have 150' frontage which meets that standard. She states that as far as RSA 674:41, this has been met by virtue of the fact that they have a subdivision plan signed by the planning board that shows their lot.

Mr. Naleid asks if this road is a private road. Ms. St. Hilaire replies yes. Mr. Naleid asks if they own any of the road. Mr. St. Hilaire replies no. Ms. St. Hilaire explains that the road is a part of the Pine Point Association. Mr. Pender asks to confirm if the association is registered with the Secretary of State. Ms. St. Hilaire replies yes.

Mr. Naleid asks if the applicants would have any control to upgrade the road even if it were financially possible. Both Mr. & Mrs. St. Hilaire reply no. Ms. St. Hilaire explains that the Pine Point Association upgrades and maintains the

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roads. Mr. Pender asks if there are any maintenance fees and both Mr. & Mrs. St. Hilaire reply yes.

5 Variance Criteria

Article IV.B. Section (1)(b)(2) ~ Type of Frontage ~ Private Road

1. Granting the variance would not be contrary to the public interest.

Ms. St. Hilaire states that granting the variance would improve the character of the neighborhood. She refers to the map provided tonight and explains that their lot is comparable in size to the rest of the neighborhood. She adds that she also provided pictures of the neighboring properties. She explains that one picture provided shows a cabin, which was the structure on this property; it was torn down prior to their purchase.

2. The use is not contrary to the spirit of the ordinance.

Ms. St. Hilaire states that this property was originally designed for use as a seasonal camp prior to the zoning changes.

3. Granting the variance would do substantial justice because:

Ms. St. Hilaire states that the approval would allow development of the property in the spirit which it was originally intended for, a seasonal camp.

4. The proposed use would not diminish surrounding property values.

Ms. St. Hilaire states that a cabin was on this property prior to their purchase. They are proposing to build a cabin.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

The special conditions of this property that distinguish it from other properties in the area are as follows:

(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:

Ms. St. Hilaire states that all the properties in the neighborhood are comparable in size and the setback requirements have been met.

Mr. Lavigne asks if the building that was there was torn down by the former owner. Ms. St. Hilaire replies yes. Mr. Lavigne asks if the size of the cabin was known and Mr. St. Hilaire replies that he believes it was 760-800 sq. ft.

Mr. Lavigne refers to the packet of building plans and designs submitted tonight. He notes that there are many pictures of structures and home designs

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included and he asks if the applicants will be choosing one of these plans to build. Mr. St. Hilaire replied yes and they will keep the home under 1,000 sq. ft.; basically keeping within the same footprint as what was originally there. He adds that they will continue to meet the setbacks. Mr. Lavigne states that when the property was purchased there was no structure on it; however, he asks if it was their understanding that this was a buildable lot. Mr. St. Hilaire replies they knew that they would need to go through this process and request a variance.

Mr. Pollock states that in one area the structure is listed as a seasonal cottage and on the plan it is noted as a mobile home. Mr. St. Hilaire states that they have an approved septic design, approved by the state and town, for a park model or for their seasonal motor home. He adds that they were told to hold off by the town as they are trying to develop on a non-conforming lot and go through the process. They have a construction company that is assisting them with the project and there may be some ledge in the area. He states that they are planning to keep it under 1,000 sq. ft. and use only as a seasonal home with a full foundation and walkout basement; maximum size of 20' x 40'.

Mr. Naleid makes a motion, second by Mr. Fowler, to grant the variance for the private road based on the fact that all criteria have been met.

Mr. Naleid states that through the applicant's testimony it is clear that they do not have the power to upgrade this road as it is under the control of the association. He adds that there is a maintenance agreement in place to ensure that the roads remain passable for their property and other residents. He states that he feels that all five criteria have been met.

Roll Call Vote:

Mr. Fowler – in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes; 5/0.

5 Variance Criteria

Article IV.B. Section (1)(c)(1) ~ Length of Road Frontage

Mr. Pender asks how much road frontage they have. Ms. St. Hilaire replies that according to the tax maps there is 153' of frontage. Ms. Smith states that there is no frontage as they do not meet the required type of frontage. Mr. Pender states that the frontage requirement is 150' and this is a private road.

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1. Granting the variance would not be contrary to the public interest.

Ms. St. Hilaire states that granting the variance would improve the character of the neighborhood.

2. The use is not contrary to the spirit of the ordinance.

Ms. St. Hilaire states that this property was originally designed for use as a seasonal camp prior to the zoning changes.

3. Granting the variance would do substantial justice because:

Ms. St. Hilaire states that the approval would allow development of the property in the spirit which it was originally intended to be as a seasonal camp.

4. The proposed use would not diminish surrounding property values.

Ms. St. Hilaire states that some of the surrounding properties have been abandoned or left in disrepair.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

Ms. St. Hilaire explains that the cabin that was on the property was torn down prior to their purchase. The properties in the neighborhood are comparable in size and the setback requirements have been met.

Mr. Naleid makes a motion, second by Mr. Pollock, to grant the variance for the length of road based on the fact that all criteria have been met.

Mr. Naleid states that based on the applicant's testimony it is clear that it is not an option to purchase additional property or to upgrade the road. He adds that the property has had a structure on it in the past, prior to their purchase. He believes that all of the criteria have been met.

Roll Call Vote:

Mr. Naleid – in favor

Mr. Lavigne – in favor

Mr. Pollock – in favor

Mr. Fowler – in favor

Mr. Pender – in favor

Motion passes; 5/0.

Article IV.B. Section (2)(b) ~ Lot Size

Mr. Pender asks what they have currently for a septic and well. Ms. St. Hilaire replies that there is no well on the property, they are part of the Pine Point Association. However, there is a community well, which is for seasonal use only. Mr. St. Hilaire states that all residents are a part of the well and get their water through this well. He adds that this water supply provides water from

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May through October. Further discussion is held regarding the community well and the above ground pipe that distributes the water. Ms. St. Hilaire states that there is a well on the property next door and they have been looking into purchasing that parcel. She adds that the property has been abandoned and has been vandalized.

Mr. Pender asks if there is adequate space to add a well and septic, and if they can meet the requirement for a well to be 75' from a septic system. Mr. St. Hilaire states that it is a large lot and that footage has not been determined at this time. Ms. St. Hilaire adds that the roads are not plowed during the winter months.

Mr. St. Hilaire refers to the approved septic design. Ms. Smith states that she spoke to a technician at NHDES who pulled their approval and looked specifically at the fact that it states that it must be hooked to a public water supply; the existing approval cannot work with a well and would need to be redesigned. She adds that NHDES relayed that the water supply must be a potable, drinkable, water quality supply and will be inspected to make sure that it is a potable water supply. The other item NHDES indicated was that the plan is approved for a mobile home in that specific location; should the structure and location change and/or how it is hooked up to the system, the inspector may require a different septic plan. Mr. Pender asks if the association maintains the water system and Ms. St. Hilaire states that the water is tested annually. Mr. Pender states that if there are 25 people or more, or 15 houses on the system, the system must be tested.

Mr. Lavigne asks if there is a state approved septic design and Ms. Smith replies yes. Mr. Naleid notes that should the location change, the plan may need to be revised. Mr. St. Hilaire states that as far as changing the location; it really should be done as proposed.

Mr. Pollock asks how far the property goes. Mr. St. Hilaire states that they own to the stone wall; it is a large lot. He adds that they have looked into purchasing the neighboring property as there is a well on the property; however, it is not available at this time. Mr. Fowler asks if NHDES feels that there is no option to add a well onto the property. Ms. Smith replies that NHDES stated that the current approval is based on what was submitted, which is a mobile home and the Pine Point water system, any deviation would require them to reapply.

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5 Variance Criteria

Article IV.B. Section (2)(b) ~ Lot Size

1. Granting the variance would not be contrary to the public interest.

Ms. St. Hilaire states that granting the variance would improve the character of the neighborhood.

2. The use is not contrary to the spirit of the ordinance.

Ms. St. Hilaire states that this property was originally designed for use as a seasonal camp prior to the zoning changes.

3. Granting the variance would do substantial justice because:

Ms. St. Hilaire states that the approval would allow for the development of the property of what it was originally intended for.

4. The proposed use would not diminish surrounding property values.

Ms. St. Hilaire states that some of the surrounding properties have been abandoned or left in disrepair.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

Ms. St. Hilaire explains that there was a cabin on the property and it was torn down prior to their purchase. The properties in the neighborhood are comparable in size and the setback requirements have been met.

Mr. Pender asks if there is any way to make this parcel larger. Mr. St. Hilaire replies that they hope to purchase lot 18 should it become available and there is a well on that lot. They have also contacted the neighbors; however, nothing is available for purchase at this time.

Mr. Fowler makes a motion, second by Mr. Pollock, to grant the variance for lot size based on the fact that all criteria have been met.

Mr. Fowler states that the applicants have exhausted all possibilities to purchase more land and make the lot more conforming.

Roll Call Vote:

Mr. Fowler – in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes; 5/0.

Mr. Pender explains that the appeal process is a 30 day time frame.

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Mr. Pender calls for a recess at 7:50 p.m. Session resumes at 7:55 p.m.

Case #15-06: David Elliot, 8 Pleasant View Drive. Map 109, Lot 38.

Applicant seeks the following variances from the Northwood Development Ordinance, to permit construction of a deck: Article IV.B. Section (1)(b)(2) type of frontage-private road & Article IV.B. Section (1)(c)(1) length of frontage; Article IV.B. Section (2)(b): lot size is 0.07 acres where 2 acres is required; and Article VII.C. Section (5): setback on lot of 100' width or less.

Mr. Naleid states that he has worked with Mr. Elliot in the past and the last case that Mr. Elliot presented, Mr. Elliot requested that Mr. Naleid recuse himself. He states that he feels comfortable to continue as a voting member for this case; however, will recuse himself, if desired by the board or Mr. Elliot. Mr. Pender states that for continuity he will request that Mr. Naleid recuse himself for this case.

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

Ms. Smith notes that members have been provided legal documentation relative to this case. After review of the materials, **Mr. Pender makes a motion, second by Mr. Lavigne, to keep the correspondence received from counsel confidential.**

Roll Call Vote:

Mr. Fowler – in favor

Mr. Farr – in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Ms. Smith explains that the public notice for this case was based on the application submitted by Mr. Elliot, which was submitted right at the end of the deadline. She states that she met with Mr. Elliot prior to his submission relative to the variances required and she erred on the side of caution as to which variances were required. She states that the board's attorney has suggested that three of the variances posted do not need to be applied for: lot size, and the two road frontage issues. She explains that the deck, which is what Mr. Elliot is applying for, is an addition to an existing non-conforming structure; the lot is already developed with an existing residence. She states that based on the non-conforming section of the zoning ordinance what Mr. Elliot is applying for would not require the other items to be addressed. She

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states that the only item to address is the variance for the setback encroachment.

Mr. Pender states that the following items will not be addressed at this time:

- Article IV.B. Section (1)(b)(2) type of frontage-private road;
- Article IV.B. Section (1)(c)(1) length of frontage;
- Article IV.B. Section (2)(b): lot size is 0.07 acres where 2 acres is required

Mr. Farr asks if the applicant agrees with the fact that these other variance requests will not be addressed. Mr. Elliot replies yes.

Mr. Pender states that the board will be addressing Article VII.C. Section (5): setback on a lot with 100' width or less.

Ms. Smith states that the board will be granting relief from the non-conforming status of the structure relative to setback only.

Mr. Pender notes that abutters Charles Brown and Victoria Brown are present with no other abutters.

Mr. Elliot states that this is an after the fact permit. He explains that he has been told by various town departments as to what to do to rectify the situation and was instructed to obtain a variance. He adds that in light of the past situation that he was involved in with the town, he has created a time line of events.

A discussion is held regarding the copies provided of the certified plot plan. Mr. Elliot states that he has a new plan to present to the board. Mr. Lavigne requests to re-copy the original certified plot plan to better delineate the information, which is illegible on the original copy.

Ms. Smith expresses concern that the abutters are notified for the purpose of having the opportunity to view the application prior to the meeting. She cautions the board should there be new information provided and it be substantially different, in fairness to the abutters, the board may want to re-notify abutters; however, that depends on how substantial the information is.

Copies of the certified plot plan are made for the board members along with copies of Mr. Elliot's time line. Mr. Pender states that this certified plan will be what the board will be working from for the discussions tonight relative to the variance requested. Mr. Elliot agreed to work with the copy of the certified plot plan.

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Mr. Elliot states that the purpose of the timeline is to outline the exact dates for what has transpired in the town hall and to show the board that he has made every attempt to comply with what the town has requested. Mr. Elliot proceeds and reads his time line into the record. (See attached document)

Mr. Pollock states that the timeline indicates that the deck was finished June 4, 2015 and he asks if there was a permit for the deck. Mr. Elliot replies that he did not have a permit for the deck.

Mr. Farr asks why the permit was not obtained. Mr. Elliot replies that his contractor informed him that a permit would not be necessary. He states that he should have followed up regarding the necessity of a permit. In addition, he explains that his neighbor also built a deck, which would have required a permit and he did not obtain a permit. Mr. Elliot states that when he received the letter from the town regarding the need for the permit he followed up.

Mr. Fowler refers to the plan and asks for clarification as to which deck location the board is addressing. Mr. Elliot explains that the existing deck was where the current addition is now. The deck was added onto the front; a 10' x 10' section, on the south side closest to the neighbor near the water.

Mr. Farr asks the applicant to amend the diagram to note the 10' x 10' deck due to the fact that the deck, as noted, is actually the existing building. Mr. Pender states that if the board allows the applicant to draw into the diagram to show the deck, it will be drawing into setbacks as shown. Ms. Smith states that she thought that the existing deck as noted was the deck recently built. She states that a certified plot plan should show the proposed deck, proposed due to the fact that there was no permit obtained. Ms. Smith asks if the proposed deck is shown on the plot plan. Mr. Elliot states that the existing deck, as it is right now, is on the plot plan. Mr. Lavigne asks if the existing and proposed deck is the same. Mr. Elliot replies yes and explains that where it states existing deck on the plan it is the 10' x 10' section and then there is a 4' section in front of the stairs. He continues to explain that to the left of the stairs it proceeds to meet the boundaries of the house or the side of the house. He adds that the stairs face the driveway and the 4' section runs parallel to the house. Mr. Elliot delineates the existing deck on the plan. He adds that the steps are the original steps that went into the house. They have been turned to face the driveway. He states that they encroach; however, they are 20' and it meets the requirement on the road side.

Mr. Pender notes that the deck appears to be over the well. Mr. Elliot states that the deck is over the well; however, there is plenty of room. He explains that there are nine steps going up. He states that the well-head is above the ground and there is ample access all around the well.

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Mr. Farr asks if the 13' on the other side is any concern to the board. Ms. Smith replies that the setback is 10 ft. based on the width of the frontage. Mr. Farr asks if the board is concerned with the entire deck or just specific sections. Ms. Smith states that the board is addressing the section of the deck that is within the setback. Mr. Elliot adds that this is approximately 4' and parallels the side of the house; it does not extend any farther out into the property.

Mr. Lavigne states that there is ample amount of room to meet the setbacks in the front. The concern is the area of the deck that is closest to the building on the neighboring lot.

Mr. Farr asks why add the small extension. Mr. Elliot replies that this section does not encroach on the front side; it only encroaches on the side and that runs parallel to the side of the house.

Mr. Brown provides pictures of the deck and area. He states that he finds it difficult to understand that Mr. Elliot did not know that a permit would be necessary. He states that he has no complaints with the project; he contacted the building inspector to see if a permit had been obtained. The board reviews the pictures provided. Mr. Brown refers to one picture provided showing the position of the house and the side setbacks. He states that the side setback is not noted on the plot plan nor is the position of the house in regard to the plot plan. He adds that he has placed a stick at 3'3" and refers back to the photo noting that the line goes through the set of stairs on the side toward his house. He states that he has complained about this issue before and because there is no line there it has not been addressed.

Mr. Elliot states that the side stairs replaced the exact footprint of the original stairs. He states that when the house was lifted to add the basement, the stairs were lifted. In addition, he states that the stairs are noted on the plot plan as well as the platform on top of the stairs. Mr. Fowler states that it does appear that they go over the line. Mr. Elliot replies it is approximately 6".

Mr. Pender states that the board is addressing the deck that is across the front of the house. Mr. Brown states that the deck is within the setback. Mr. Lavigne states that the portion within the setback is 6' 9". Mr. Elliot states that as the questions are asked many of the issues will be addressed.

Mr. Pender states that the side stairs are not being addressed tonight by this board. He clarifies that tonight the discussion is relevant to the new section of the deck that extends into the setback, which is 10'; therefore there is 6'9" of the deck that is in violation of the ordinances (photograph 3, presented by Mr. Brown).

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Ms. Smith states that the distance to the corner of the house is not noted on plot plan. She states that the figure is not known for the corner of the house as the deck is not permitted; therefore, the deck does not exist. She states that it appears to be that the house is at an angle, the foundation for the house is not shown on the plot plan. Mr. Lavigne states that it would be close to 3”.

5 Variance Criteria

Article VII.C, Section (5)

1. Granting the variance would not be contrary to the public interest.

Mr. Elliot states that there is no adverse impact to the neighboring property. The open deck, which will never be enclosed, is within the character of the neighborhood. It will not cause shadowing, block light or air flow, or block view of the lake. The majority of the neighbors are in support of this project. The only neighbor who issued a concern owns the abutting property on the north side. The structure on this neighbor’s property has not been maintained for at least the past 14 years, is an eye sore, and remains a safety and fire hazard. The proposed deck is only a 10’x10’ on the southwest side of 8 Pleasant View Avenue, has access to the main entrance of the home with stairs in the middle of the deck, and has a small 4” walkway on the side closest to the neighboring dilapidated structure. Emergency vehicles, delivery vehicles, and other visitors will continue to have the same access, as the length of frontage or type of frontage will not be altered in any way. Additionally “the open space design section of this Ordinance” (Refer to Northwood Development Ordinance IV(B)(2)(c), Dimensional Requirement, Open Space Design) “permits a reduction of certain road frontage standards”. Safe access will continue to be afforded to each property, for each property owner, for emergency vehicles, for delivery vehicles, and for other visitors. It does not create overcrowding of land. Adequate provision of utilities and services remain intact. The proximity of the structure at 8 Pleasant View Avenue meets the maximum and minimum setback requirements set forth by the Town of Northwood. “The proximity of the structure to the road does not adversely affect the character of the neighborhood, encourage or discourage pedestrian activity, or block sight distance for drivers at any intersection, or driveway. The proximity of the lot to the nearest two abutters does not increase or affect fire safety, does not decrease the provision of adequate sunlight and air circulation, and does not decrease the availability of space for site annuities including landscaping, driveways, and building maintenance. (Refer to Development Ordinance IV. B. 4a Purpose). He states that it meets the minimum setback from both the private road and waterbody. He adds that the 8 Pleasant View Avenue owner will agree to construct a fence between the opposing abutter, and the 8 Pleasant View Avenue owner’s property in order to be “exempt from setback requirements” and to negate the only setback issue with the only opposing abutter. (IV. B, 4 c. Setbacks: Exemptions driveways, fences, and stone walls

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shall be exempt from setback requirements.) He notes that the fence would also partially hide the abandoned, neglected, nuisance of a structure located adjacent to Mr. Elliot's property. Also, he adds that according to the Northwood Ordinances, "small lots may have their setbacks reduced" as per VII. (C) (5). Additionally, the distance between the opposing abutter's structure and the 8 Pleasant View Avenue structure will not be increased or decreased as the proposed outdoor deck runs parallel to the existing property line and the structure of 8 Pleasant View Avenue. Finally, he states a certified plot plan prepared by a licensed land surveyor has been paid for and filed by Mr. Elliot with the Northwood building department to comply with the Northwood Development Ordinance.

Mr. Farr refers to Mr. Elliot's statement referencing open space. He explains that it is his understanding that open space is specific to subdivisions and that would not be relevant to this case. Mr. Elliot states that he went through the ordinances and if this statement should be removed as it is not in compliance to this structure he would not be opposed to removing it as he feels that there is enough testimony.

Mr. Farr also refers to the statement indicating that the minimum and maximum setbacks have been met; however, the diagram shows that this is not correct. Mr. Elliot responds by saying he meets the setbacks for road frontage.

Mr. Farr references another comment made relative to the structure not being increased or decreased as the proposed deck runs parallel to the house. Mr. Farr states that there is an increase to the encroachment because it does exist, whether or not it is significant or not, because it is parallel is a judgement call. Mr. Elliot states that he would agree if the deck encroached on the neighboring property; however, he feels it is how "parallel" is worded and interpreted.

2. The use is not contrary to the spirit of the ordinance.

Mr. Elliot states that the property is located on a private road maintained with maintenance paid for exclusively by himself and Mr. Barton for the past 14 years. The Town of Northwood is not responsible for any maintenance of this private road. The lot size of 8 Pleasant View Avenue cannot be altered. It was previously designated as an 80'x40' lot in 1912, and has not changed since this time. There will be no increase of vehicle congestion, we still maintain the two parking spaces in the driveway, and nothing decreased with that. He states that there is no increase of safety issues due to fires and other dangers, no reduction of adequate sunlight and air circulation, no increased overcrowding of land, no increased concentration of population, no enhanced pedestrian travel, and will contribute to the character and quality of the neighborhood. (Refer to Northwood Development Ordinance IV.B.(2) Dimensional

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Requirement, Lot Size). The road frontage to the 8 Pleasant View Avenue property also cannot be changed. He states that the setback is within code from the road to the open deck.

3. Granting the variance would do substantial justice because:

Mr. Elliot states that granting the variance allows the homeowner access via a stairway. It also replaces the previously existing outdoor open deck. It provides a partial view of Northwood Lake. It offers the family an opportunity to enjoy leisure time in the outdoors in a quiet and peaceful environment.

4. The proposed use would not diminish surrounding property values.

Mr. Elliot states that the deck actually enhances property values and building environment. He adds that an appraisal has been done of his property and since adding this deck the property value has increased. He adds that the deck adds to the aesthetic qualities of the town. It helps to protect the quality of life and does not damage the town's natural beauty or ecological integrity. It provides a quality of living arrangements. It protects the sense of community and friendly small town atmosphere in Northwood.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

Mr. Elliot states that the special conditions of this property that distinguish it from other properties in the area are as follows:

- Located on private road
- Lot cannot be sub-divided
- The property was previously owned by the same owner who owned all of the adjacent properties including all of the abutters to the 8 Pleasant View Avenue property.

Mr. Lavigne states that he is not so sure that the encroachment would not diminish property values. It states that it is 4' that extends into the setbacks 6' 9". He states that it would not diminish the homeowner's value; however, he is concerned about the values to the surrounding properties.

Mr. Fowler refers to a comment relative to the sunlight, air circulation, and the overcrowding of land. He states that any time there is an encroachment to the setbacks further than what was already there is an increase to crowding the land. He adds that relative to the stairway and deck to enjoy the view, he explains that this deck section is 4' x 10' and the view would be seen from the 10' x 10' deck and that is where the gatherings would be. He adds that he does not see the reasoning to go all the way and be parallel to the house.

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Mr. Lavigne states that if he were the homeowner he would have liked to have made the deck even in the front as it is aesthetically pleasing in a small area. He adds that it is a small area that can be used; however, it does encroach 6' 9".

Mr. Elliot states that the 10' x 10' section is a very small area and the 4' deck section was added for extra space to include a grill area to make the front area look better. He adds that there is a garage underneath the 4' section so the deck could not be brought out further and stay within that boundary.

Ms. Parmele states that she does not understand why the other variances were not required; however, respects that there is a legal opinion. She speaks to the issue of overcrowding and the way this property has expanded over time. She states that this lot is very small so anything that is done to expand the building is potentially going to have an impact. She adds that this is a private road and is a very small road. She states that the area is a very small area. She adds that the area is near the water and where people will congregate in the summer. She states that the properties are all very close together; everything matters.

Ms. Parmele states that as far as hardship, nothing was presented relative to the hardship. She states that the location being on the private road is not a special condition. She notes that many people live on private roads. She states that this is not anything special as all of the abutters are on the private road. She continues and explains that the lot cannot be subdivided is not related to this deck. She states that the comment relative to the previous ownership is by the same owner is not relevant. As far as hardship, in a practical sense, Mr. Elliot had a deck on the cottage and it became enclosed, then added a basement and added a story. She states that this is zoning creep and now there is a deck. She states that this is very frustrating and it is unfortunate that the other variances were not included as they are still impacts. Ms. Parmele states that as far as the substantial justice, the deck is good for the applicant; however, where is the justice.

Mr. Pender asks if anyone else on the street has a deck on the front of their house. Ms. Parmele replies that the Bartons have a deck and most of it is on the water.

Ms. Parmele continues and states that the deck must be weighed against how it impacts the abutter. She adds that the property value for the applicant has probably increased; however, she feels that it is not an attractive deck. She asks about the property values for the abutters and states that the variance criteria is that there will not be any decrease to the surrounding properties. She states that the potential decrease to property values is a concern to her.

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She adds that the incremental crowding on the applicant's property definitely has an impact to her property values and the impacts are above and under ground as well. She mentions the existing septic system issues and the fact that it is a shared system.

Mr. Elliot states that he did not reference any hardships. He adds that he believes that it does matter that there was a previous property owner because his home and the dilapidated home next to him were both owned by the same owner and sold as separate properties. He explains that this is why there is the shared septic system.

Mr. Brown states that he agrees that the property is dilapidated; however, he is planning to build a new home and it was a waste of time and money for him to address the structure previously.

Mr. Farr states that the matter being addressed is the 4' section of the deck and it is only a few feet from the abutter's property. He states that relative to the testimony given that it would not be contrary to the public interest and to the safety and welfare, along with air quality and fire safety it does not make the case. He states that the house interferes and he feels that this interferes even more. He does not feel that there has been enough evidence provided to state that this is not contrary to the public interest. He states that relative to the spirit of the ordinance, the purpose of the ordinance speaks to the spreading out of these types of small neighborhoods in terms of the quality of life, air circulation, fire access, and the safety. He references the pictures provided and states that they show the congested area and this deck adds more crowding, and although it may be incremental it is incremental as a significant encroachment. Mr. Farr addresses the substantial justice criteria regarding the stairs being used to access the front door and the porch to left, these areas are not being addressed tonight and there are other accesses available that do not require a variance. Mr. Farr states that the testimony for substantial justice does not apply for the 4' section. He adds that there is an access already over the property line. To add a deck that encroaches and not obtain a permit, and for the board to say that it is substantial justice to grant the variance; a strong case must be presented why it is substantial justice. Mr. Farr states that he only heard about the access to the porch. As far the diminishing of property values, Mr. Farr states that today he could agree; however, at some point the property will change and any encroachment in that area will reduce the property values. He adds that if the deck was critical then perhaps he would feel differently; however, he does not feel that the 4' section of the deck is critical. He adds that there is no argument that the 6' encroachment is critical. With the hardship, Mr. Farr states that he heard the argument that this is a small lot; however, it was created to be a small lot. He states that there is nothing different on the lot than any other areas. He adds

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that there is already a fairly substantial sized deck, there is access, and therefore, the only hardship is because the owner put it there. He states that is not unique to the land and he would have done the same thing if there would not have been an encroachment.

Mr. Farr makes a motion, second by Mr. Lavigne, to deny the variance for the 6'9" encroachment based on the fact that all conditions have not been met.

Mr. Lavigne states that there is a 6'9" encroachment into the setback. Mr. Elliot states that he does not understand where the measurement is coming from. Mr. Lavigne explains that the drawing shows 3.3' away from the lot line is where the deck is. Minus 10' equals 6.9 ft. The board concurs.

Roll Call Vote:

Mr. Fowler – in favor

Mr. Farr – in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Mr. Pender states that he believes that the 4' section with the grill sitting on it is very close to the lot line next door and is a fire hazard.

Mr. Elliot request a clarification of what the board voted on. Mr. Pender states that the board voted to deny the 6.9 ft. encroachment towards the Brown property line and that section will need to be removed.

Mr. Elliot asks if he has the right to appeal. Mr. Pender replies that the appeal time is 30 days.

Mr. Elliot asks for the board to explain what consists of a fire hazard. Mr. Pender replies that the board cannot and refers him to the fire chief. Mr. Elliot states that he has spoken to the fire chief and fire marshal. He states that he has done a beautiful job with his house and the neighbor's structure is allowed to remain untouched. He requests support and asks which direction he should move forward. Mr. Pender states that the section of the deck is in violation of the codes and does not met the criteria to obtain a variance; this decision can be appealed. The board with then decide to vote in favor or deny the request to appeal.

Mr. Naleid returns to the board at 9:02 p.m.

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Internal Business

2016 Budget

Ms. Weaver notes that a draft budget is provided in the packets. Ms. Smith explains that she has submitted a level funded budget into the system as the deadline was last Friday. She states that the board needs to either approve or amend accordingly. A discussion is held regarding the legal costs for the board so far this year and how the budget works for legal lines for all town departments.

Mr. Farr makes a motion, second by Mr. Naleid, to approve as presented as a level funded budget. Motion passes unanimously.

Law Lectures

Ms. Smith states that the dates for the law lecture series have been announced. The information will be emailed to members.

Mr. Lavigne makes a motion, second by Mr. Farr, to adjourn. Motion passes unanimously at 9:15 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary