

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

Chairman Roy Pender calls the meeting to order at 7:00 p.m.

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

VOTING DESIGNATION: Roy Pender, Tom Lavigne, Bruce Farr, and Curtis Naleid.

ABSENT: Doug Pollock, and Alternate Robert Bailey

MINUTES:

September 22, 2014

Mr. Farr makes a motion, second by Mr. Lavigne, to approve the minutes of September 22, 2014, as written. Motion passes unanimously, 5/0.

NEW CASES:

Case #14:13 (A): Richard Chandler, 19 Gulf Rd. Map 114, Lot 7.

Applicant seeks a variance to Article IV, Section (A)(IV-1) and Article IV, Section (B)(4)(b) of the Northwood Development Ordinance for a septic system within the structure setback.

Web Stout, land surveyor, is present along with the property owner Richard Chandler.

Mr. Stout explains this parcel is approximately 35 acres on Gulf Rd., Pleasant Lake. He states that in May they appeared before the planning board for a boundary line adjustment (BLA) to move the property line. He states that there were two residential structures on this one lot; a camp and the farmhouse. He explains that the approved BLA was to adjust the lot line between the two structures placing the camp on one lot and the homestead on a separate lot. Mr. Stout explains that as the mylar and plans were completed it was noticed that the leach field was within the setbacks. He states that the leach field is considered a structure and is not allowed in the building setback.

Mr. Chandler states that the camp was built in 1959. Mr. Stout states that the leach field was probably installed in 1960-1961. He states that the leach field is currently sharing water with the property to the west, which is also owned by Mr. Chandler. Mr. Stout states that during the BLA process he demonstrated where the 4,000 ft. area and where a well could be located, if the current system should fail. He states that this is an approximate location.

Official as of November 24, 2014

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

In addition, Mr. Stout states that there is a driveway to the east of the building, which has been there since the 1930's and used by the farm. He states that the road was recently used for logging. He adds that the 4,000 ft. is a state requirement and there is enough room to move the leach field but typically if a system fails it is put back in the same area.

Mr. Stout states that they are requesting the variance for the leach field within the side setback.

Mr. Pender asks the size of the new lot. Mr. Stout replies that the existing lot, prior to the lot line adjustment, was 1.356 acres and it is now 3.03 acres. He states that this now meets the frontage requirement of 150'. He states that this is separating the two residential structures from being on one lot.

Mr. Naleid asks where the 50' waterfront setback is. Mr. Stout states that the 50' setback is 4'-5' into the structure; most of the structure is outside of the setback.

Mr. Lavigne asks if the variance request is to allow the camp and septic system to remain where they are. He asks about the 4,000 ft. area noted to the rear of the property. Mr. Stout explains that typically on plans he shows the existing structures and that there is an area to bring this up to standards and meet the criteria. Mr. Lavigne asks if it were necessary to be done and Mr. Stout replies that is correct. Mr. Stout states typically the state does not get involved until there is construction proposed and then they would require a new system or if the system failed. Mr. Naleid asks if the state would only require a system design at that point, not the installation. Mr. Stout replies yes. Mr. Naleid asks if the variance was granted could the board require that a system would not be able to be replaced in the current location; it would require that the system be replaced or a new system installed in the 4,000 ft. area, if at such time a new system was needed.

Mr. Stout provides the board with the special exception plans to review as the wetlands are shown. He explains the proximity of a possible new system and that it would need to be placed on the other lot due to the proximity to the wetlands and to the lake.

Mr. Lavigne asks about the property side setback of the camp. Mr. Stout states that the structure is within 2 ft. into the setback on one side and 4 ft. on the front side.

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

Ms. Smith states that the applicant is not here for relief of the front setback. She states that the side setbacks are being moved closer and this is the only item that the board has jurisdiction on. She adds that the only issue is that the leach field is in the side setback. She states that the camp is not within the lot line moving towards it.

Mr. Farr asks if the lots have been separated. Mr. Stout explains that the BLA was approved in May and they have since realized that the septic system is within the side setback. He states that the plan has not been signed or recorded. Mr. Farr states that the ZBA approval is necessary in order to finalize the BLA.

Variance to Article IV(B)(5)(b)

5 Variance Criteria

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

Mr. Stout states that the variance would allow the new property line to remain in its current location, which has been placed between two driveways. The structure and septic system have been in existence since 1960.

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

Mr. Stout states that the placement of the property line could not be put in another location due to existing driveways, which puts the septic system 4' +/- over the structure setback line. He adds that this is a much less non-conformity than two structures on one lot.

3. Granting the variance would do substantial justice because:

Mr. Stout states the variance would allow an existing septic system to be in a small portion of the building setback.

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

Mr. Stout states that the use would not change and there will be no visible changes to the property.

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:

Mr. Stout states that there are two residential structures on one lot.

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

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

- (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:**

Mr. Stout states that this non-conformity was created due to the property line being moved to put residential structure on its own lot.

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

Mr. Stout states that the variance would allow the residential structure to maintain its current septic system.

Mr. Pender states there are no abutters or interested parties present and no correspondence has been received from any abutters.

Mr. Farr makes a motion, second by Mr. Lavigne to grant the variance to Article IV, Section (A)(IV-1) and Article IV, Section (B)(4)(b) of the Northwood Development Ordinance for a septic system within the structure setback, based on the fact that all 5 criteria have been met.

Mr. Farr states that the owner has a difficult situation as this is an existing lot that will be subdivided at some point. He states that he feels that it makes sense to split the property now while the owner is the same for both properties. He states that this will also address the septic system specifically with the proximity to the lake. He adds that he is not as uncomfortable with the septic system in the setback as he is that the two houses are on one lot.

Mr. Lavigne states that he agrees that all criteria have been met. He states that should the septic system fail he believes that the new system will be relocated to the back portion of the lot.

Mr. Naleid states that the system may not fail and he suggests adding a condition to the motion stating should the system fail, it would need to be relocated and should the camp be expanded, modified, or renovated, beyond having a new system designed, the new system would need to be installed.

A discussion is held regarding "modified". Mr. Naleid states that adding a bedroom would justify a new septic system.

Mr. Naleid suggests an amendment be added to the motion stating that if the existing septic system fails or if the camp is expanded requiring the design of a new system, the new system would need to be installed (in the new location).

Official as of November 24, 2014

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

Mr. Farr amends the motion, seconded by Mr. Lavigne, to grant the variance to Article IV, Section (A)(IV-1) and Article IV, Section (B)(4)(b) of the Northwood Development Ordinance for a septic system within the structure setback, based on the fact that all 5 criteria have been met with the condition that should the existing septic system fail or if the camp is expanded that a new system will be designed and installed (in the new location) at that time.

Mr. Chandler states that he does not have any issue with the condition because if an addition was proposed then the requirements for the septic system would change. Mr. Stout adds that he feels that the state would be concerned with any proposal because of the proximity of the lake.

Roll Call Vote:

Mr. Farr - in favor

Mr. Fowler – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Mr. Pender explains the appeal process.

Case #14:13 (B): Richard Chandler, 25 Gulf Rd. Map 114, Lot 8.

Applicant seeks a special exception to Article VI, Section (A)(4)(a) for a driveway (for new lot development) within the 20' wetland buffer.

Web Stout, land surveyor, is present along with the property owner Richard Chandler. Mr. Stout states that they are requesting a special exception to allow the driveway to remain within the 20' buffer.

Plans are reviewed. Mr. Stout states that he has highlighted the driveway portion, a woods road. He explains that this lot abuts the lot from where the variance for the septic system was granted. He states that the proposal is to subdivide allowing the farmhouse to be on its own lot and create another buildable lot. In doing so, there is the existing road that has been there since the late 1930's and has been used by the family, most recently used for logging of this property as well as an abutting parcel of 55 acres in Deerfield.

Mr. Stout explains that there is a prime wetland; Pleasant Lake North Prime Wetland, on the back side and Pleasant Lake on the other side. Mr. Stout explains the topography of the lot and area. He states that the area is straight up. He adds that there is a gate at the woods road. Mr. Stout

Official as of November 24, 2014

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

states that in order to move the road it would require more disturbance so this small area is within the 20' wetland buffer.

Mr. Stout states that he has met with the conservation commission and a letter of support is provided to the board for review. Mr. Stout explains that the conservation commission suggested a condition that the area within the buffer not be paved. He adds that the state feels that gravel is now considered impervious and it does not drain. He states that the state will probably require 200' off the driveway coming in from the road that would not be allowed to be paved. He adds that there is a section of the driveway that is approximately 50' in length that is entirely within the 20' buffer.

Mr. Lavigne asks about the use of the driveway. Mr. Stout replies that at this time it is not used very often; however, they are proposing this driveway to be used for the subdivision and it will serve as a residential driveway. He states that this is the only access into this lot and it is 35' straight up to the middle of the lot.

Mr. Chandler states that the driveway was used for logging and it was used for about one year. Mr. Stout states that the road was upgraded for the logging use and stone was added at the end. Mr. Chandler states that the town's road agent approved the road for the temporary logging use. In addition, Mr. Stout states that if a road was proposed for this area it would require applications to the planning and zoning boards.

Mr. Fowler asks how many lots are being proposed to be subdivided. Mr. Stout replies only one. He states that this lot has a great view of the lake; it is 35'-40' above the lake.

Mr. Farr asks about the acreage of the entire lot. Mr. Stout replies that originally it was 34 acres. He states that the subdivision will create one new lot and the two lots will become 18.91 acres and 15.12 acres, which is the farm lot.

Article VI, Section (A)(4)(a)

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***

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

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, and are made part of the record of the case; and***
- [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; and***
- [3] there shall be provisions made to restore the site as nearly as possible to its original grade and condition; and (Rev. 3/01)***
- [4] a state wetlands permit shall be obtained when required.***
- [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. Pender states that the board is concerned with the area being restored to the original grade and condition. He states that he believes that the applicants have shown that it will remain the same.

Mr. Pender states that no abutters or concerned parties are present and no correspondence has been received from any abutters.

Mr. Pender reads the applicants responses to the criteria as follows:

The existing use is a woods road in the 20' wetland buffer. The proposed use of the woods road will be a driveway for a residential use. This woods road has been in existence since the 1940's. The woods road was upgraded approximately 6-7 years ago for a logging operation on this property. A temporary permit was issued by the road agent for logging. The request is to allow the woods road to remain in its current location and be used as a driveway. Moving this driveway out of the buffer would require extensive earth removal and re-grading of a very steep slope next to a wetland. Both the woods road and slopes are very stable, and any additional grading could be detrimental to the area.

Mr. Naleid makes a motion, seconded by Mr. Fowler, to grant the special exception to Article VI, Section (A)(4)(a) of the Northwood Development Ordinance to allow the existing woods road to remain in the 20' wetland

Official as of November 24, 2014

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

buffer, based on the fact that all 5 criteria have been met with the condition that the road will be used for a single family residence, agricultural use, and/or timber harvesting; nothing beyond a single family use.

Mr. Chandler asks if encumbering the property and limiting to one residential structure is appropriate. He states that the lot is 19 acres with over 600' of frontage. He states that he is not sure what will happen to the lot and this is an appropriate restriction.

Ms. Smith explains that the condition suggested in the motion is on the use of the woods road for a driveway, as presented. This condition does not encumber the lot and only means that the driveway can be used for this purpose, for a residential structure. She states that the driveway is only encumbered for this purpose relative to the buffer. This will not prevent another driveway from being proposed on the lot in the future. Mr. Chandler states that this section is really the only reasonably, fiscal access point for the lot.

Mr. Farr states that the applicant is applying for a special exception. He states that the board's job is to determine if the applicant met the criteria or not. He states that if the conditions are met, he does not believe that conditions can be set. Mr. Pender states that additional driveways could be added or a road could be built and the special exception does not allow that. Mr. Naleid states he believes that a duplex could be built on the site or the site could be used for commercial.

Ms. Smith states that if the lot was changing and being further developed, it would require an applicant to apply to the planning board. She adds that the board could add a condition to a special exception (relative to the special exception criteria) as has been done in the past. She understands the intent and Mr. Naleid's concerns; however, the lot cannot be expanded any more than the one lot or further developed without going to the planning board.

Mr. Naleid states that this road is approved to be used. Ms. Smith replies that the road is being approved as a driveway for the creation of this lot. She states that the road is a woods road and is changing to a required driveway for the one lot subdivision. Mr. Stout states that there is an existing use for the road today and could still be used but not for the driveway. Ms. Smith explains that the subdivision regulations require a driveway be designated in order to create a lot. Ms. Smith states that if the special exception is approved it is for the creation of a residential lot.

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

A discussion is held regarding the request from the conservation commission to not pave the driveway within the buffer area.

Mr. Naleid withdraws his motion, and Mr. Fowler withdraws his second.

Mr. Farr makes a motion, seconded by Mr. Lavigne, to grant the special exception to Article VI, Section (A)(4)(a) of the Northwood Development Ordinance to allow the existing woods road to remain in the 20' wetland buffer, based on the fact that all 5 criteria have been met with the condition that the area of the driveway within the 20' buffer remain unpaved to meet the condition of maintaining the driveway in its original state.

Roll Call Vote:

Mr. Farr - in favor

Mr. Fowler – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Mr. Pender explains the appeal process.

INTERNAL BUSINESS:

Discussion of Proposed Ordinance Changes

A discussion is held regarding a definition of “seasonal” and proposing for an ordinance change. Mr. Pender provides information and an example definition from the Town of Hampton for review. He explains that Hampton based their definition of “seasonal” on the energy code and if it did not comply with the energy code it was deemed to be “seasonal”. They inspected every rental property for fire codes and issued a rental certificate of occupancy with an expiration of 10 years. He states that the time is coming that these properties will need CO’s to be reissued. Mr. Pender also notes that he was also provided a checklist and discussion ensues.

Mr. Naleid states that this definition is relative to rental units and Northwood is not dealing with rental units. He suggests that the town treat seasonal as a year-round. He states that the ZBA deals with this and he feels that it should be defined. Mr. Lavigne asks which season is deemed seasonal.

Mr. Fowler asks if there is a difference in the tax base for year-round residences vs. camp values. Mr. Naleid states that the values are less for camps but it is the same tax rate. Ms. Smith states that the tax cards do indicate a camp or seasonal.

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

Mr. Farr states that the board has had this discussion many times and all of these discussions may be irrelevant until seasonal is defined or the board treats the variances as if the structures were all was year-round residences.

Mr. Lavigne states that perhaps a time frame could be used to define seasonal, from one specific date to another. Mr. Naleid suggests that if a structure is classified as seasonal then the structure cannot be used a primary residence. Mr. Pender adds that if the structure is not listed as the primary address that eliminates the homeowner from doing their own electrical, plumbing, etc. Mr. Naleid states that may also trigger the bank with financing as it is viewed differently than a primary residence.

Further discussion is held regarding additional uses and the burdens to the town and schools. Ms. Smith states that there is a concern with non-conforming lots and structures and the use of the right of way as well as it could become expanded. Mr. Lavigne refers to RSA 674:41 and states that the board really needs to know if it is a seasonal use and what times of year it is or is not being used. Mr. Pender adds that structures that are built now must meet all codes and that is not really a seasonal structure. He adds that not claiming a structure as a residential structure deems that there will not be children in the schools, and other town services that cost.

Mr. Pender suggests that the information be forwarded to the planning board for review. Ms. Smith states that the planning board has chosen to not pursue any amendments for March; however, she will provide to the planning board and keep it on the agenda to begin discussions for the following year. The board concurs.

Alternate Members & Rules of Procedures

As directed, Ms. Smith contacted counsel relative to an alternate member's participation. Mr. Pender explains that alternate members of the board can sit with the public and ask questions specific to the cases before the board. No changes are necessary to the board's rules of procedures.

Meeting Times

A brief discussion is held regarding changing the times of the meetings. **Mr. Naleid makes a motion, second by Mr. Farr, to begin the meetings at 6:30 effective November 2014 until which time this needs to be addressed. Motion passes unanimously; 5/0.**

Recognition of Services

The members and staff of the zoning board of adjustment recognize the many, many years of dedication and service that Mrs. Jean Lane gave to the Town of

Official as of November 24, 2014

**Town of Northwood
Zoning Board Adjustment
October 27, 2014**

Northwood and the zoning board. It is with deep regret that the board acknowledges the passing of former ZBA member Jean Lane.

ADJOURNMENT

Mr. Farr makes a motion, second by Mr. Naleid, to adjourn. Motion passes unanimously at 8:22 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary