

**Town of Northwood
Zoning Board Adjustment
April 30, 2014**

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

PRESENT: Chairman Roy Pender, Vice-Chairman Tom Lavigne, Bruce Farr, Doug Pollock, Alternate Robert Bailey, Attorney Jed Callen, Building Inspector/Code Enforcement Officer Charles Smart, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

VOTING DESIGNATION: Roy Pender, Tom Lavigne, Bruce Farr, Doug Pollock and Robert Bailey.

ABSENT: Curtis Naleid

PUBLIC PRESENT: Charlie Brown, Victoria Parmele, Sandi Barton, Mrs. Elliot.

NEW CASES:

Case #14:04: David Elliot, 8 Pleasant View Ave. Map 109, Lot 38. Applicant seeks an appeal from an administrative decision of the building inspector relative to a cease and desist letter that was issued for construction not consistent with the building permit application.

Mr. Elliot is present along with his attorney, Atty. Mark Hodgdon.

Atty. Hodgdon states that there was a building permit application filed almost one year ago and it apparently stated a height of 21 ft. He states that in all of his and Mr. Elliot's testimony as well as materials presented during numerous hearings through November, they have represented that the height would be 29 ft. or less. He states that this figure was off and is now less than 24', which is 11', or more, below the maximum height allowed. Atty. Hodgdon states that they did not feel and still do not feel that the error would have been material to the board's decision as they believe that they were clear that the height would be more than 24' and the board's decision was based on that knowledge. He states that they believe that a reduction in height is not a material change with what has happened and what they hope that the board intended to approve. Atty. Hodgdon states that they think that it was within the board's decision to reduce the height than what was represented. He adds that he will refer to past minutes where this is reflected as well as their materials submitted, if necessary. He states that they believe that the same issues that the board has decided on previously have not changed and if anything, they have diminished due to the reduced height, which was one of the board's legitimate concerns. Atty. Hodgdon notes that there is a new contractor who states that the height is 23'6" and they are requesting 24', which is just for the pitch.

There are no questions from the board at this time.

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Attorney Scott Hogan is present representing his clients Charlie Brown and Victoria Parmele.

Atty. Hogan speaks to the appeal to an administrative decision and refers to an opinion received from Attorney Laura Spector-Morgan. He states that Atty. Spector-Morgan's conclusion was that 21' was the figure presented to the ZBA during the review of the special exception, and the board did not have jurisdiction to review any height in addition to that 21'.

Atty. Hogan states that what he really wants the board to hear tonight from his client's perspective is that they took issue to the prior approval of the special exception. They felt it was too tall; it had adverse impacts to their property. He indicates that this matter is currently up for appeal. He states that the configuration of the Elliot's structure, as it currently exists, is substantively different than what was approved. He explains that the differences are the way the roof line has been re-designed, the overall volume of the structure, and how it has been re-distributed. He states that these are the changes that have different impacts than what was originally discussed at the last meeting.

Atty. Hogan states that tonight the board has two issues to address, an appeal to an administrative decision and a special exception application. Atty. Hogan explains that the building inspector has determined that the existing structure does not comply with the prior approvals. Atty. Hogan requests that the board hear from Charles Brown whose property is right next to Mr. Elliot's structure. He knows what the structure was originally as well as what has been approved during the first special exception application, and how that differs from what exists.

Atty. Hogan states it is clear in the record that the structure that exists is different. He explains that there is a competing basis for why there is something different now. A letter sent from Atty. Hodgdon to Mr. Smart, dated April 2, 2014, indicated that there was a new contractor on site and that for sound structural reasons this new contractor recommended to re-align the roof over the approved expansion to match the existing roof line. An email from Mr. Elliot noted that the contractor is asking to align the new roof with the existing roof to best allow for proper drainage and for aesthetic purposes. Atty. Hogan states the structure as it exists and as it is currently being expanded is different for those reasons. He states that the building inspector determined that what is being built right now is not the same as what was applied for and approved. He states that he expected that the board would have heard from Mr. Smart prior to himself speaking.

Mr. Pender asks what the date of the application is that Atty. Hogan is referring to. Atty. Hogan replies that the recent application for the administrative appeal

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is dated March 30, 2014, and is also the same date as the new special exception application. Mr. Pender asks if there was a plan provided with the building permit application. Atty. Hogan replies that the original building permit application was the only item in the record that represented that the structure was 21' in height.

Atty. Jed Callen states that he believes that the issue that all parties are present for is the appeal of the denial of the building permit application, which is the one referred to by Atty. Hogan, dated March 30, 2014, as well as dated April 2, 2014. Atty. Callen adds that there is a plan attached to the document and initially that plan indicated that the height would be 24' 3", which was amended to 25' on April 9, 2014. He asks Atty. Hogan if this is the correct plan that he is indicating that has been varied or is it the new plan that is currently being built.

Atty. Hogan replies that the original application, as far as he can tell, did not have a plan associated with the special exception application. Atty. Callen states that this discussion tonight is not relative to the original application from 2013. He explains that this hearing tonight is relative to a building permit application dated March 30, 2014 and April 2, 2014, along with the denial of that building permit. He adds that there is a plan attached to that building permit from April 2, 2014. He states that the board will need to determine whether to uphold or reverse that permit denial. He states that if any reasoning has changed, the board needs to know what the changes are and if it is from what has been presented and denied or not. He states that this meeting does not have anything to do with any of the applications from 2013 as that is not the issue before the board tonight.

Atty. Hogan disagrees and refers to the legal advice received from Atty. Spector-Morgan, dated April 7, 2014. He states that originally an application was made indicating 21' as the height of the structure. He states that the basis for the town's attorney to provide a letter on April 7 was that the original special exception that was granted was based on 21' in height and the board had no jurisdiction to act on anything beyond that.

Ms. Smith explains that the legal opinion received from Atty. Spector-Morgan was requested by the building department and it was not a request of the ZBA. She states that the letter was based on the building inspector's request for information.

Atty. Hogan states that Atty. Hodgdon sent a letter to the town indicating that the cease and desist order was invalid. He states that Atty. Spector-Morgan then responded to that letter from Atty. Hodgdon, which is the April 7, 2014, letter.

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Mr. Farr states that the board's job this evening is to decide whether the building inspector erred relative to the March 2014 building permit. Mr. Pender agrees. Mr. Farr suggests that the 2013 cases not be addressed again if it is not relevant.

Atty. Hogan replies that April 2, 2014, Mr. Elliot applied for a building permit and on that same day the building inspector denied that permit application based on the fact that the new construction does not comply with the design submitted with the permit application from June 2013 and approved 2/3/14.

Mr. Farr states he understands the decision made by Mr. Smart relative to the 2013 building permit and he believes that Mr. Smart erred referring to the 2013 permit because in looking at the March 2014 permit, it did reference height. Mr. Farr adds that he is on record from a prior meeting mentioning the structure height being less than 29'. He states that if there were decisions being made by the building inspector based on the 2013 permit, he feels that there was an error made. He requests clarification and someone to note the height on the record.

Atty. Hodgdon asks if the structure will be under 25'. He states that the framing was measured today at 23' 7".

Atty. Hogan states that the only thing that is being addressed at this time is the appeal to the administrative decision. Mr. Pender replies yes. Atty. Hogan states that this was from the determination of the building inspector. He continues and adds that the height has been a "moving target". Mr. Pender states that he believes that the elevation was the reason for the cease and desist. Atty. Hogan states that it appears that the height of the permit was exceeded and the volume of the expansion with the change in the roof design. Atty. Hogan states that he wants the board to understand that there was a specific design that was submitted to the town and was approved, and the current building is different than that design, as the building inspector found. He adds that the volume of expansion with the change in roof design, the applicant has said that the new contractor recommended re-aligning the roof over the approved expansion to match the existing roof line. He explains that his point is that, height aside, the reconfiguration of the building adds volume in a way that affects the neighboring properties that this board has not seen before. He states that this is the point of the appeal to the administrative decision; the town's building inspector found that both height and volume of the expansion is different than what was approved. Mr. Pender states that he understands that by raising the roof there is more volume involved.

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Atty. Hodgdon states that in response to the letter from Atty. Spector-Morgan, he states that they vehemently disagree with that position because they are going back to the original application from 2013 and there were a series of hearings and testimony, which corrected the mistakes that were in that application. He explains that there was ample notice of what was proposed. He explains that the roof line was sloping from back to front; 3 ft. all the way across the back and sloping towards the front. Now the roof slopes side to side like the existing roof, with the peak in the middle. The volume, if including the roof, is reduced. He adds that the volume, as far as the building inspector is concerned, is the second error that was in the original application, in which it was stated there was 250 sq. ft. and it is actually 288 sq. ft. on each floor. He states that they were asked, at the November 25 meeting, if the dimensions were 12 x 12 x 24. They did reply yes; however, there was an error as it is 12 x 8 x 24 with an enclosed porch with additional living as there will be two floors. Atty. Hodgdon states that this was a mistake in the original application and by the time of the hearing in January 2014 and the special exception was granted, those mistakes had been corrected and everyone was well on notice of what was being proposed, two, 12 x 24 rooms, one on the enclosed porch and a room above it, for living area, not bedrooms. He states that there is no occupancy being added.

Mr. Pender shows the application to all parties. Atty. Callen asks for Atty. Hodgdon and Mr. Elliot, to confirm that what has been shown is the actual application that was submitted, dated April 2, 2014. Atty. Hodgdon refers to the drawing and mentions the 3 ft. and the peak, and states that what was originally designed would have been 3' all the way across as it would have been sloping from back to front. Mr. Pender asks if they have changed the gable end. Atty. Hodgdon replies yes and adds that it will actually be lower on the side facing Mr. Browns cottage.

Atty. Hogan states that his response to Atty. Callen's question relative to what is the application being addressed tonight. He states that the reason all parties are here is for an application for an appeal to an administrative decision dated March 30, 2014. He states that the appeal of Mr. Smart's determination was filed on March 30, 2014 and several days after that Mr. Elliot applied for a building permit for the structure that currently exists and on that same day, April 2, 2014, Mr. Smart issued a permit denial. All of this came after the application for the appeal of the administrative decision. Atty. Hogan reads the letter of denial from Mr. Smart noting that "it appears to have exceeded the height of the permit and the volume of the expansion with the change in roof design".

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Mr. Pender states that Atty. Hogan is talking about another permit, not the one that was presented to all parties present. He asks if the permit that he is referencing is dated June 2013. Atty. Hogan replies that the denial of Mr. Smart states that it does not apply to the permit application in June 2013, which is why he keeps mentioning it. He states that it is relevant as it is the only approval that the board has granted.

Atty. Callen asks for the date of the denial and Atty. Hogan replies April 2, 2014, the same day as the building permit application from Mr. Elliot. Atty. Callen notes that the application for the administrative appeal is also dated April 2, 2014, and Atty. Hogan replies no, that is dated March 30, 2014. Ms. Smith states that the second date on the applications is the date the materials were received in the zoning board office. Atty. Callen states that all of the materials tonight have the dates of March 30, 2014 and April 2, 2014, and state that the decision appealed from the building inspector is he issued a permit denial based on the permit application, which states that the structure height is 21'. Atty. Hogan replies yes and Atty. Callen asks if all parties agree or not that the appeal, which appeals a permit denial, dated April 2, 2014, which is a denial of the permit, dated March 30, 2014 and April 2, 2014. Atty. Hogan replies yes. Atty. Hodgdon adds that all of the documents were simultaneous.

Atty. Hogan states that the other document that is also relevant is the June 2013 original approval, which is what the building inspector cited in the denial to what it is not in compliance with. Atty. Callen states that is the reasoning of the building inspectors and this board is being asked by the appeal to weigh in on whether they agree and support it as a valid, or reverse or amend the denial.

Atty. Hogan states that he agrees and adds that the point he is trying to make is that the decision made by the building inspector specific to the height and the overall design configuration of the current building is different than what was previously approved. He states that his clients can show the board what did exist, what was approved, and the impacts are now different. He states that the applicant has admitted to making the structure different. He adds that Atty. Hodgdon has indicated in his letter that there is a difference; however, it is not materially different. He states that his clients believe that the difference is enough to have an impact.

Atty. Hogan states that the stop work order is legitimate and the board should deny the appeal to an administrative decision and then address the new special exception application.

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Mr. Pender asks if the permit application accurately depicts what is being built. He then refers to the statement at the bottom of the building permit, which states “extend old existing ridge line to abut new addition”, and asks if this is accurate. Atty. Hodgdon states that it is hard to describe the roof line and he provides a picture. Mr. Elliot explains that the existing roof line is shingled and there is about a 6’-8’ gap between the existing roofline and the addition. He notes that there is water coming into the house along this area.

Atty. Callen reads the statement again. Mr. Elliot states that he met with staff and went over the applications to make sure that everything was consistent to what exists and what is proposed. Atty. Hodgdon states that the extension is to provide more ability to shed water on the roof. He states that changes happen in the field, some are material, some substantive, and some that are just a normal part of construction. Atty. Hodgdon states that they understood that the structure was to be 29’ or less; therefore, making this change is not a material change as the proposal is less than that. He adds that the structure has changed; however, the amount of living area has not changed.

Atty. Hogan states that Atty. Hodgdon just stated that the proposal is not to add living area. He states that the appeal of administrative decision and the new application for special exception state describe it as living space. Mr. Pender states that the discussion now should be relevant to the cease and desist. Atty. Hogan adds that the plan with the reference that was just read has been amended with initials. One area was the height and another indicated storage space which was crossed out and changed to living space and initialed. He also refers to an area of the application for a description of the proposal and all that was written in was living space.

Atty. Hogan states that the applicant has been clear to the board that the structure has changed and that was what Mr. Smart determined. He states that Mr. Smart was correct, as it is different than what was approved and it is not an immaterial difference. He requests the board allow his clients to speak tonight. He adds that the clients’ point is the way in which the structure is different has additional impacts.

Charles Brown has built a model of the applicant’s home and his home. He explains the original design using the model. He further provides commentary regarding the differences in the proposal, specific matters to the roof line and the actual structure. Mr. Pollock states that this is not a part of the approval; the approval was specific to the height only. Mr. Brown states that the applicant did provide pictures at a previous meeting depicting the rafter construction of the original structure. Mr. Pender states that we are talking about the height. Mr. Brown states that there is a different configuration. Mr.

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Pender states that this meeting is relative to the height, a cease and desist and a permit that has been revoked due to a height adjustment.

Mr. Hodgdon states that they are not agreeing that the model is correct as it does not account for the basement of 4 ft. He adds that there were two designs submitted and they were different. He states that Mr. Brown is only referencing one design.

Ms. Parmele asks how the second design is different. She states that this has been ongoing for many months and there has been a lot of talk about the expansion. She states that this meeting is to address impacts and this proposal is more of an impact. Ms. Parmele states that they have tried to calculate the original volume but are not able to do so because of the change in the roof line. She states that it is not so much of a change but it is concerned about the amount of volume and it is a three story building on an antiquated septic system.

Atty. Hogan refers to Mr. Pender's comment regarding that the board originally approved the height. However, what was originally approved was the exhibit that Ms. Parmele just referenced. He explains that his clients are here to say that the original proposal was the application, and not just the height. It was a specific representation of how the building would be configured. He states that his clients stated that if the special exception was approved there would be adverse impacts. The board did approve the special exception and the appeal process will be done accordingly. He reminds the board originally denied the application as the conditions of the special exception had not been met and it would increase the existing overcrowding of the area, the lot size, the structure height, etc. Atty. Hogan states that a motion for a re-hearing was filed and the decision was reversed. He states that just after that was done, Mr. Smart determined that what exists is beyond what was initially approved; first denied and then approved. He adds that the building is different. The applicant has admitted that. The decision of the building inspector is factually correct.

Atty. Hodgdon states that it is not correct. He states that the design as referred to by Atty. Hogan, states that the second floor will have 350 sq. ft. of living area and increase the volume. Atty. Hodgdon states that the second floor is 288 sq. ft.; it is less than what is represented on the design. He adds that based on the volume, this change is under what was represented to the board. He states that they are not exceeding what was requested.

Ms. Parmele asks why the applicant never provided volume numbers. She states that the volume is crucial and the configuration of the volume is all in the front of the home, and near the lake.

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Mr. Brown refers back to the model and explains what currently exists.

Atty. Hodgdon refers to his letter dated August 19, 2013, which was a description of the enclosed porch and adding a full room above it. He adds that on October 28, 2013 an additional letter was sent with the same description. He refers to the minutes of November 25, 2013 which include a description in response to a board member, in which the dimensions were given as 12'x24', to include a room over it. He states that they were always clear that this would be a full length room to add living space. He states that he does not believe that there was ever any misunderstanding on the board's part. In fact, he adds that they believe that the design was higher. He states that they are asking for the design provided today.

Atty. Hogan states that the applicant has the burden to prove with evidence to the board that they meet the standard for the appeal of the administrative decision and for the new special exception application. He states that his clients have gone through much effort to provide evidence to the board to show the difference. He states that this is not the abutter's burden. He states that the applicant has the burden to prove that the building inspector was wrong. He states that the applicant has stated that the building is different. He adds that his clients have demonstrated that the building is different.

Mr. Pollock refers to the model and asks what the height is of the smaller section. Mr. Brown replies 21'. Mr. Pollock states that this would apply to the older permit, 2013, and he asks what the height is of the new section. Mr. Brown replies that it is 24'-25'.

Mr. Pender shows a drawing to Mr. Hogan, which is attached to the permit that was applied for March 30, 2014. Mr. Pender asks when Mr. Hogan refers to the permit if he is referring to the permit being shown. Atty. Hogan replies no, and explains that he was specifically told that after that permit was submitted to the town that a discrepancy between the heights represented was determined by the town. He states that he was then told that Mr. Smart and Ms. Smith were trying to resolve these discrepancies and Mr. Elliot then provided an amendment to the original application. He states that he would have to say no regarding the permit from what the town told him does not accurately represent what was being asked for. Mr. Pender refers to the amended copy and notes that Atty. Hogan has referenced changes. He asks if this is what is existing now. Atty. Hogan replies that Mr. Brown just stated that the height is between 24-25' representing 24'3": so the amended special exception application represents that but that is not what was submitted for the appeal to the administrative decision.

Atty. Callen refers to the building permit application and shows the schematic attached to that permit application, which was subsequently amended by

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changing 24'3" to 25', followed by initials, and changing the storage to living space, with initials, and adding the phrase stating the following: extend old existing ridge line to abut the new addition. He asks if all parties understand that this is the attachment to the building permit application, provided over a period of several days. Atty. Hogan replies that the 24'3" building permit application was denied by Mr. Smart on April 2, 2014. Atty. Callen replies that this is the item that is being appealed. Atty. Hogan replies yes. Atty. Callen asks if the amended schematic, which was amended April 9, 2014 after the denial, is a fair representation of what is being built and proposed to be built now. Atty. Hogan replies yes. Atty. Callen states that this clarifies what is being proposed to be done.

Mr. Elliot states that the peak line has never changed whether it is the old or new; the peak has never changed. He states that the highest point is the peak. He states that in terms of being close to the road, the addition has never been intended to be closer to the road as it is being built on the same frame work of the existing porch. He explains further that there is a 4 ft. basement, which is 4 ft. above ground which is to avoid lake levels and to get above ground. This was at the advice of the builder. He states that there is 8 ft. on the first floor and 8 ft. on the second floor, totaling 20', plus the peak line. He explains that when he filled out the applications and with all three forms he has tried to stay consistent. He states that the changes made and the initials applied were to protect him so that he would be able to stay below the number that was listed. He believes that it was 25'. He states that he was advised by the town and building inspector who was only trying to do his job to cover all basis that it would not be necessary to return to the board over a few inches. He adds that he knew that the building height would be less than 25' and lower than 29' that was reflected in three sets of meeting minutes. He states that the peak has always been the same and it is the highest point.

Mr. Brown asks how the peak can be the same when the original permit was 21'.

Mr. Farr makes a motion to grant the appeal based on an error of the building inspector. He states to summarize there are 2 essential points. The building inspector should have been looking at the 2014 building permit, dated April 2, 2014, and not applying the standard of the 2013 building permit, so he was in error on that. Mr. Farr states that relative to the 2014 building permit, he was already on the record referring to the essence of the second room above the porch. He adds that the intent when the case was heard and the building permit came to us, that we were pretty clear that was going to be a full sized room up there. He adds when the volume changed by moving the pitch line a little bit, it does not represent a significant change. He further states that he does not believe there has been any testimony provided that the change is a

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substantial or significant change beyond normal construction details that are necessary to clean it up. He states that the issue of a substantial change and the issue of height were addressed (at the previous hearing) and he feels that there was an error made on the building inspector's part. **Mr. Pollock seconds.**

Mr. Farr states he would like to clarify that the actual building proposed now is actually less in volume than what we had talked about in terms of 29' and less in height.

Roll Call Vote:

Mr. Bailey – yes

Mr. Farr – yes

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 5/0.

Case #14:05: David Elliot, 8 Pleasant View Ave. Map 109, Lot 38. Applicant seeks a special exception to Article VII, Section (B)(3)(a) for an upward expansion of an existing non-conforming structure located within the setbacks, with a structure height of 25'.

Atty. Hodgdon requests to table the motion based on the prior vote of the board. He states that he believes that the matter has been resolved at this time.

Mr. Farr makes a motion, second by Mr. Pollock, to table Case 14-05, at the request of Atty. Hodgdon.

Atty. Hogan asks if the applicant's request to table the case is the same as withdrawing. Atty. Hodgdon explains that he is aware that there is an appeal pending and he requests the opportunity, if necessary, to bring it off the table at a future time so that they would not need to refile the application. Attorney Hogan states that makes sense to him.

Roll Call Vote:

Mr. Bailey – yes

Mr. Farr – yes

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 5/0.

Appointments

A discussion is held regarding members terms. Ms. Smith states that typically the board sends a letter of recommendation to the selectmen recommending re-appointment of members. The terms for Mr. Bailey and Mr. Lavigne are up for

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re-appointment. **Motion to send letters of recommendation to the selectmen is made by Mr. Farr, second by Mr. Pollock. Motion passes unanimously; 5/0.**

Adjournment

Mr. Lavigne makes a motion to adjourn, second by Mr. Farr. Motion pass unanimously; 5/0.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary