

**Town of Northwood
Zoning Board Adjustment
July 21, 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, Doug Pollock, Alternate Matthew Fowler, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

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

ABSENT: Alternate Robert Bailey

MINUTES:

June 23, 2014

Mr. Lavigne makes a motion, second by Mr. Pollock, to approve the minutes of June 23, 2014, as written. Motion passes unanimously, 5/0.

NEW CASE: Continued from June 23, 2014

Case #14:08: 598 First NH Turnpike, LLC, 598 First NH Turnpike. Map 222, Lot 23.

Applicant seeks a variance to Article IV, Section (B)(2)(d), of the Northwood Development Ordinance, to create a lot with less than the required minimum of 1 acre of contiguous upland soils for development purposes. Property owned by Peter Horne.

Mr. Scott Frankiewicz, LLS of Brown Engineering and Surveying, and Mr. Greg Bauer, the representative for the owner, are present for this case.

Mr. Frankiewicz states that a 2 lot subdivision application has been submitted to the planning board. He explains that the proposal is to have the buildable area of the lot in the front portion of the property, which is .82 acres, otherwise there would be a wetlands crossing needed with an impact of 2,000 sq. ft. to access the rear of the property which has a total of 1.5 acres of upland. He states that they are requesting a variance to allow building in the front of the property with less than 1 acre. He adds that the lot is buildable in the rear only with the filing and approval of a wetland permit. He states that they have state subdivision approval for building in the front area as well as the NHDOT highway access permit for a residential lot.

Mr. Frankiewicz provides an overview of the property explaining that it is the stone house with approximately 5 acres and 445 ft. frontage. He states that there are two outbuildings along with the existing house. The site is approximately 3.5 acres of wooded area with the wetland dividing the front and

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rear of the property. He explains that the proposal is for a two lot subdivision, with access to the new lot to be on the westerly end of the property, east of Signal Ave. Mr. Frankiewicz states that each lot will have at least 1 acre of buildable area even though they are trying to build in the front of the property to avoid crossing wetlands and any wetland impacts.

Mr. Pollock states that he has walked the property and only saw two flags; one designated the wetlands and there was one other red flag. He states that he was not sure as to what the flags were representing and where they were on the map.

Mr. Frankiewicz states that the wetlands were flagged last year by Schauer Environmental when the project began. He states that the control hubs are there and there may be some wetland flags; however, most are probably gone due to the maintenance of the lawn.

Mr. Lavigne asks if the plan is to build a house if the subdivision is approved. No response is provided. Mr. Frankiewicz explains the well radius and leach field locations. He notes that there is a 4,000 sq. ft. area for the leach field for the state subdivision approval.

Mr. Lavigne asks about the location for the proposed driveways. Mr. Frankiewicz states that the driveway will be approximately 30 ft. west of the Signal Systems driveway for better site distance. He explains that originally the driveway was proposed to be in the middle of the lot.

Abutters Leigh Hansen and Christopher Quinn are present.

Mr. Pollock states that the local requirements could be met if the building was proposed to be in the rear of the property; however, the proposal is to build on an area in the front. Mr. Frankiewicz replies yes and explains that the proposal is to allow for environmental protection and not cross the wetlands.

Mr. Naleid states that he has walked the area and notes that it was easy to step over the stream area. He explains that he has obtained permits to cross wetlands that cannot be walked within the development. He feels that in a situation where it is necessary to obtain permits, this is a minor impact to add culverts and have a driveway to cross.

Mr. Frankiewicz replies that he agrees and adds that the crossing is for a runoff stream about 3 ft. and it is approximately 70 ft. from wetland to wetland. He states that it is harder to obtain permits now and the time frame is

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about 6 months. He states that it is permissible; however, the proposal is to stay in the front of the property, which is a lesser impact.

Ms. Smith states that she believes that a wetlands crossing would still require relief from the ZBA, in the form of a special exception, under the wetlands conservation overlay district for a driveway to be built to the back portion.

Mr. Pender asks for abutters comments.

Abutter Christopher Quinn comments relative to safety with another driveway in the vicinity and is such a close proximity to the town's recreation fields.

Abutter Leigh Hansen asks if the variance is granted and the subdivision approved, is it possible for a multi-family dwelling to be built on the property. Mr. Naleid replies no because the zoning regulations require 2 acres per unit.

Ms. Hansen asks if it would be possible for a mobile home to be placed on the lot. Mr. Pender replies that it would be a possibility for a mobile home to be placed on the lot. Ms. Hansen asks for opinions from the board as to how a mobile home would affect property values of surrounding properties. Mr. Pender states that the board does not have any input. Ms. Hansen refers to the board questions for a variance and believes that one question is related to the impact to abutters. She states that a residential property is more preferable to the prior proposal; however, due to the lack of specific zoning in Northwood anyone that purchases the property could build a single family home on the property, which could have positive, negative, and/or neutral affects to the neighborhood. She notes that there are many mobile homes existing along Rte. 4. She expresses concern with adding a mobile home to the property.

Ms. Smith states that she is not sure if the applicant has limited themselves to residential only. She states that the application is a specific request to create the lot. She adds that it fits the standard lot requirements, but unless the ZBA restricts the property to residential only that is not implied. She explains that the request is for relief from an ordinance that requires 1 acre of continuous uplands to create the lot itself. She adds that the board could do a conditional variance based on the criteria provided.

Mr. Pender asks if the proposal is to construct a building on site. Mr. Frankiewicz replies that he believes that the owner will probably sell the lots. Mr. Bauer states that both properties will be sold after the subdivision.

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Mr. Farr states that the comments from Ms. Smith were helpful in that this is a subdivision for a lot, an unknown lot, not a residential and not a commercial lot, and available to do what the ordinances will allow.

Mr. Naleid asks if a future buyer were to use the lot as a commercial property would they still be required to be on the 1.4 acre parcel or would a commercial property be allowed to develop without a variance. Ms. Smith replies that once a lot is created the person developing the lot would be required to meet the regulations in order to develop the site. She adds that if the proposal were a non-residential use a site plan approval would be required to be obtained.

5. Variance Criteria

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

Mr. Frankiewicz states that granting the variance will not be contrary to the public interest because the applicant is providing two areas of upland soils, one being 1.48 acres and one being .82 acres. He states that the requested variance is to allow the construction of the residence in the front of the parcel, on the .82 acre to avoid crossing the wetlands to access the 1.48 acre section. He adds that NHDES Subsurface Bureau has approved the .82 acre area for building purposes. He adds that they have demonstrated that there is sufficient area for the construction of a house, septic, and well.

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

Mr. Frankiewicz states that it is their belief that the variance request is not contrary to the spirit of the ordinance. He explains that the ordinance appears to be in place to assure that an area exists on any proposed parcels sufficient for building purposes. NHDES Subsurface Bureau has approved the .82 acre area for building purposes and they feel that they have demonstrated that there is sufficient area for the construction of a house, septic, and well.

3. Granting the variance would do substantial justice because:

Mr. Frankiewicz states that granting the variance would do substantial justice because it would allow the owner to develop the parcel as desired, with little environmental impact. The alternative is to access the 1.48 acres of upland in the back portion of the parcel, which requires crossing a wetland and the placement of a culvert which is increasing the environmental impact.

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

Mr. Frankiewicz states that granting the variance would not diminish surrounding property values as it is proposed to be developed as a single-family residence, which is in common with most of the surrounding properties.

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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. Frankiewicz states that the special conditions of this property are that two upland areas are proposed on the parcel, both are buildable, but to access the area with 1+ acre of upland soils a wetland crossing would be required. The front portion of the parcel, which is less than 1 acre of upland soils, has been proved to be buildable by way of NHDES Subsurface Bureau approval and he feels they have demonstrated that here is sufficient area for the construction of a house, septic, and well.

(A) Owing to the special conditions, 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:

Mr. Frankiewicz states that no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property as there is sufficient buildable area, even though it is less than 1 acre of upland, in the front portion of the parcel.

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

Mr. Frankiewicz states that the proposed use is a reasonable one as it is an allowed use in an area of similar uses. He adds that the majority of the uses in the area are single-family residences, which is what is proposed on this parcel.

Mr. Farr requests to clarify if the applicant is asking for a conditional variance for a single-family residence. He states that most of the testimony provided for surrounding property values and impact is based on a single-family residence. Mr. Frankiewicz states that is what they are proposing.

Ms. Smith states that a single-family residential use is the minimum use permitted on any new lot. She states that the applicant is stating that they can fit that minimum use on the front section of land, which is what the board is really looking at. The board needs to decide whether or not that amount of upland soil will be able to meet the conditions and the standards in order to at least be able to, at a minimum, have a residence on the lot. She adds that if a conditional variance is granted, it would be that any development of the lot would have to have that use of the .82 acres of contiguous upland and be residential. She states that the applicant would need to come back to the board for anything different but the ZBA would need to create that stipulation as a

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part of the condition. Ms. Smith notes that the lot could be conveyed, and if locked in as residential, a variance would be needed to change the use.

Mr. Farr states that the character of the neighborhood and the access onto Rte. 4, a culvert could be put in and cross the wetlands. He concurs that it does make sense to not impact the environment if it can be avoided; however, he does not feel that putting in a culvert because you need to is a strong argument. He adds that the applicant is lacking .2 acres to build in the front section and he feels that the proposal is a good plan as it spares the back area. He expresses concern with the property being a commercial business up front where putting it in the back area is more in line with the character of the neighborhood.

Mr. Farr makes a motion to grant the variance based on the fact that all 5 criteria have been met, with the condition that only a single-family home can be placed on the lot. There is no second provided; Mr. Farr withdraws his motion.

Mr. Pollock states that the back lot could conform to the town's regulations of having one acre of upland and he feels it would be more in keeping with the neighboring lots as they are all sizeable lots. He feels that this proposal will change the configuration of the area and the house should be built in the rear of the lot as it would be more conforming. Ms. Smith adds that the regulations would not be met either way because they cannot get to the area without crossing a wetland.

Mr. Naleid states that he agrees with Mr. Pollock in that the purpose of the zoning ordinance is to prevent overcrowding of the land and avoid concentration of the population. He states that he feels that pushing the house up and onto the road is crowding that space. Mr. Bauer states that many of the surrounding homes are along the front of the road. Mr. Naleid states that approving this is variance would be making it worse. He adds that the town's Master Plan and ordinances strive to enhance the environment and aesthetic quality of the town. He states that there are also many homes along Rte. 4 that are set back and unseen. He reads from the Purpose section in the zoning ordinance noting to keep the open space, the natural beauty, integrity, recreation, and other characteristics of the town. He states that if the board allowed houses to line Rte. 4, it is moving away from the purpose of the town's zoning. He states that if a culvert was installed and a wetlands permit obtained then the property could be used and still have the open field maintained.

Mr. Bauer asks how a permit would be granted. Mr. Naleid states that they would have to file for a special exception and once the requirements are met

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the board must grant the special exception. Ms. Smith reads the criteria for the special exception.

Mr. Lavigne makes a motion, second by Mr. Pollock, to deny the variance based on the fact that criteria's 1, 2, 3, and 5 have not been met. He notes that he feels that criteria 4 may have been met as he is not sure if the neighboring properties would be diminished with the proposed use. He explains that this proposal would be creating another non-conforming lot. He states that it is clear that 1 acre of upland soils is required and nothing distinguishes this land to be any different than 50% of the town; it is not special.

Roll Call Vote:

Mr. Farr-opposed

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – opposed.

Motion passes; 3/2.

Mr. Pender explains the appeal process of 30 days to appeal the board's decision.

INTERNAL BUSINESS

Proposed 2015 Budget

A proposed budget is provided and general discussion is held regarding the budget. Ms. Smith provides an overview of the department's line items. 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. A brief discussion is held regarding the board's application fees. It is agreed that fees will be discussed at a future meeting. **Mr. Farr makes a motion, second by Mr. Lavigne, to approve increasing the printing/advertising line of the budget by \$300, for the ZBA for 2015. All other lines are level funded. Motion passes unanimously; 5/0.**

Mr. Lavigne makes a motion, second by Mr. Farr, to adjourn. Motion passes unanimously at 7:50 p.m.

Respectfully submitted

Lisa Fellows-Weaver
Board Secretary

Official as of September 22, 2014