

**Town of Northwood
Zoning Board of Adjustment Meeting
August 28, 2017**

Chairman Pro Tem Fowler calls the meeting to order at 6:30 p.m.

PRESENT: Chairman Pro Tem Matt Fowler, Roger Belanger, Brenda DiMatteo, Ruth Vultaggio, Babette Morrill, and Pam Sanderson.

TOWN STAFF PRESENT:

Board Administrator Linda Smith and Land Use Secretary Susan Austin.

VOTING DESIGNATION: Matt Fowler, Brenda DiMatteo, Ruth Vultaggio, Babette Morrill, and Pam Sanderson.

Minutes

Ms. Sanderson made a motion to approve the minutes of July 24, 2017. Ms. Morrill seconded. Motion carried 5/0.

Ms. Smith stated that the first two continued cases were withdrawing their applications, and that the board would need to vote to accept their withdrawal.

Continued Cases:

Case # 17-09 Wayne and Lori Preve: 20 Faucher Lane, Map 206 Lot 008. Applicant wishes to convert a seasonal home into a year-round home on a non-conforming lot. No physical changes are being proposed, only the use. The applicant requests the following:

- A variance to Section IV Article B(1)(b)(2) to allow a single-family home on a private road without upgrading the private road.
- A variance to Section IV Article B(1)(c)(1) length of road frontage required 150'
- A variance to Section IV Article B(2)(b) lot size; property has .16 acres; 2 acres are required.
- A variance to Section IV Article B(4)(b) House/Deck Setbacks; 20' required

Ms. Sanderson made a motion to accept the withdrawal of the application for case 17-09. Ms. Morrell seconded. Motion carried 5/0

Case # 17-10 Lynda and Kevin Moore 90 Tasker Shore, Drive Map 111 Lot 38. Applicant wishes to place a shed one foot from the property line and requests the following:

- A variance to Section IV Article B(4)(b): Minimum setback does not meet 20 feet.

Ms. Sanderson made a motion to accept the withdrawal of the application for case 17-10. Ms. Morrell seconded. Motion carried 5/0

CASE 17-16: John Kane, 18 Shore Road, Map 122 Lots 45,46 & 77. Applicant seeks appeal to RSA 674:41 to remove existing mobile home and additions and replace with new home. Property is located on a private road that does not meet the requirements in the statute.

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Ms. Smith stated that she spoke with the lawyer, and the lawyer stated that she was available to meet with the board at 5:30 before the next regular meeting. She stated that the board could hear the case tonight, or they could wait until after they had a chance to speak to the lawyer and read the minutes from the selectmen's meeting. The board stated that they would like to meet with the lawyer. Mr. Kane stated that he was upset that this process has been going on for so long. He stated that the decision the selectmen made was unfair and based on little information.

Ms. Sanderson made a motion to continue Case 17-16 until the next scheduled meeting on September 25, 2017, in order to allow the board time to review the minutes and get legal advice. Ms. Morrill seconded. Motion carried 5/0.

**CASE 17-11: Suzanne Steed and Grace Burr, 32 Shore Drive, Map 122/39.
Applicant seeks to construct a 512-foot addition with a basement, and relocate the utilities from the shed to the house and requests the following variances:**

- A variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance, lot has .28 acres, where two acres are required.
- A variance to Article IV.B (1)(b)(2) for type of road frontage that does not meet the zoning ordinance, lot is on a private road.
- A variance to Article IV.B (1)(c)(1) for length of road frontage that does not meet the zoning ordinance, lot has 100 feet, where 150 feet is required.

Maria Dolder, Becky Steed, and Grace Burr were present. Ms. Dolder presented the board with updated septic and shoreland permits. Ms. Dolder stated that the applicants were adding a 512-foot addition with basement in order to create a bedroom and storage area. They are also relocating the utilities that are located in the outdoor shed. They are also planning on upgrading their septic system, they have approval for a two-bedroom septic system. Ms. Dolder stated that the home will stay seasonal. She stated that there was significant building in the area. When the applicants were here before they requested a much larger project. Ms. Dolder stated that an Issue was raised about the deed restriction. She stated that the deed restrictions are for the people that were in this chain of title. She also stated that they had 7 letters from abutters stating approval.

Five criteria for granting a variance to Article IV. B(2)(b) lot size:

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

To be contrary to the public interest, the variance must be unduly, and in a marked degree conflict with the ordinance such that violates the ordinance's basic zoning objectives. To ascertain whether granting the variance would violate basic zoning objectives you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The

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Applicants are not proposing to construct anything that is out of character for the neighborhood, but instead are simply requesting to construct a modest addition to the home that already exists on the property. This is typical for this area. In fact, even with the addition, the home will be comparable or smaller to the other homes within the area. Furthermore, the majority of the homes within this area have at least two bedrooms. Similarly, no abutting properties will be impacted by the proposed addition because the applicants are able to construct the entire addition on their property while maintaining all of the required setbacks under the zoning ordinance. The property has a natural, wooded buffer from its abutting neighbors. In fact, the lot on the side where the addition is to be constructed, consists of a community beach and the owners of the other direct abutting lot are in support of the proposal. Finally, although the property is located on Shore Drive, a private road, this road has already been heavily built on. In fact, the applicants lot currently houses a residence. This property will not be the first along this road to have recent construction on it. Clearly the road in its current state can support the proposed use without the necessity of being upgraded at this time. The applicants are not changing the use of this property, nor increasing the amount of people that will be using the property. Accordingly, the granting of the relief requested herein shall have no impact on public safety, health or general welfare of the public. As such, the variance relief requested will not be contrary to public interest, but instead will allow the applicants to utilize the property in a reasonable manner.

The use is not contrary to the spirit of ordinance

One of the expressed general purposes of the ordinance is to balance the process of growth, development and change with the need to preserve and enhance those qualities which make Northwood a safe and desirable place to live. The Variance relief being requested by the applicant is certainly in keeping with that general purpose. The underlying use of the property itself is expressly permitted in the zoning ordinance. Amongst the stated purposes of Articles IV.B(1) & (2) of the zoning ordinance is the desire to prevent congestion in the streets, overcrowding and avoid undue concentration of population. The variance relief being requested by the applicant is also keeping with this specific purpose. The property also has a natural, wooded buffer which allows for less crowding in the area. In fact, the lot on the side where the addition is to be constructed, consists of a community beach. Furthermore, Article VII.B(2) of the zoning ordinance specifically allows for the construction of an addition to a non-conforming structure when the expansion is in the direction away from the lot line at issue. That is clearly the situation in this case. Given that the proposed use itself complies with the zoning ordinance and the variance relief requested will not alter the essential characteristics of the neighborhood, nor alter the character of the property as it exists today, it is clear that the relief requested does not sacrifice the spirit or purpose of the ordinance, either, either under its general purposes or the specific rationale for minimum lot size and frontage requirements.

Granting the variance would do substantial justice

One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the applicant clearly satisfies this requirement. The property has

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already been built on and currently houses a residence. The applicant is simply requesting to construct an addition onto the existing home. Although the proposed addition will result in a larger home on the property that currently exists, the applicant will still maintain all of the required setbacks on the property. Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. As stated above, even with the requested relief, the difference between that required under the ordinance and that provided shall not create any adverse effect on the adjoining neighborhood. As previously stated, the property has a natural, wooded buffer from its abutting neighbors. In fact, the lot on the side where the addition is to be constructed, consists of a community beach. Furthermore, the applicants have obtained a letter from their direct abutters expressing their support for this proposal. Accordingly, there will be no adverse impact on the adjoining neighborhood. On the other hand, without the requested variance, the applicants will not have a bedroom or any storage area on this property, therefore, granting the variance will result in substantial justice.

The proposed use would not diminish surrounding property values

The applicant is proposing to construct an addition on their residence by obtaining the proper building permits and in compliance with applicable public health regulations. In fact, the applicant has already obtained a shoreland impact permit and a septic approval. This will also allow the applicants to re-locate the utilities on the property from the shed to the house. The proposed addition itself will not be out of the norm or character for the neighborhood, and it is a use that is clearly permitted under the zoning ordinance. It is also important to note that there are no lots within the community that are two acres in size. Given that the applicants will be able to construct the addition while maintaining all required setbacks from its neighboring property lines, the use will have no adverse impact on neighboring properties, nor will it diminish surrounding property values. Instead, the newly updated residence, with an updated septic system will add value to the general neighborhood. The proposed residence will not be out of the norm or character for the neighborhood. The applicants are simply requesting to construct an addition onto the existing home.

Literal enforcement of the 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:

This property is unique in this area in several ways. First of all, unlike the neighboring properties, it has a natural, wooded buffer from its abutting neighbors. Even given the fact that the property has comparable acreage to many properties in the area, the addition being proposed will not result in the home being the largest in the area. In fact, even with the addition, the home will be comparable or smaller than others in the area. Furthermore, the majority of homes within the area have at least 2 bedrooms. At this point in time, this property does not even have 1 bedroom. In addition, the utilities for this house are located in a shed outside of the home, which is both unique

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and unusual for this community. As part of this addition, the applicants will be able to re-locate the utilities into the residence. Similarly, the applicants are able to maintain all of the required setbacks for the addition, even with the variance relief requested. The property is also unique in the fact that it abuts the community beach. The beach has been utilized by the general public, which impacts the private road in the area of the applicant's property. Finally, the relief being requested by the applicants is the minimum is the minimum relief required in order to allow the applicants to construct the addition to the property for a much-needed bedroom and storage area.

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

As stated above, the actual use proposed for this property, a single-family residence, is expressly permitted under the zoning ordinance. The applicants are simply requesting to construct a modest addition to the single-family home. Although the proposed addition will result in a larger residence on the property, the addition will be constructed in a manner that will maintain all of the required setbacks on the property. It is also important to note that there are no lots within the community that are two acres in size, but many lots have much larger homes on them. Given that the proposed use will not alter the essential characteristics of the neighborhood or the property, but instead will allow the property to be used for and in the same spirit as permitted, there is no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restrictions on the property. The same can be stated in connection with the requirement to upgrade Shore Drive. The road has already been heavily built upon, some of which include much larger residences. The applicants maintain and plow the section of the roadway in front of their property and shall continue to do so. Although the applicants do not intend to upgrade the road to town standards, they do intend to upgrade their section of road with reclaimed asphalt. It is also important to note that one of the abutting properties is a community beach which has been allowing use by the general public. As part of this use, the general the general public have traveled upon the section of road in front of the applicant's property, causing impact on the road which is not caused by the applicants. Given this, and given the fact that the applicants are not changing their use of the property, there is no fair and substantial relationship between the general purposes of the ordinance and the specific restrictions on the property.

The proposed use is a reasonable one because:

The underlying use of the property itself is permitted in the zoning ordinance. The design of the addition, even with the variance relief requested, exceeds the required setbacks under the zoning ordinance. The design of the addition, even with the relief requested, exceeds the required setbacks under the zoning ordinance, and therefore, shall not impact the neighboring properties. Given that the property has already been built upon and currently houses a single-family residence, the proposed use of the property is clearly reasonable. The variance relief will simply allow the applicants to have a bedroom and storage space, something that it does not currently have. There are other residences within the area that larger than what is being proposed by the applicants, which is a clear indication that the use being proposed is reasonable and consistent with the area. Similarly, the fact that the applicants are not changing their

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use of this property makes it clear that the addition is reasonable without the road to be further upgraded.

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

This property is unique in several ways, including the fact that the residence already exists on the property and the applicants are not requesting a change in the current use. Instead, the applicants are simply requesting an addition, which will be constructed while maintaining all of the required setbacks, even with the variance relief requested. Even with the addition, this shall not be the largest home in the area, but will allow the applicants to have a bedroom and storage area, both of which are reasonable. At this point in time, this property does not even have 1 bedroom. In addition, the utilities for this property are located in a shed outside of the home, which is both unique and unusual in this community. As part of this addition, the applicants will be able to relocate the utilities into the residence. These are clear indications that the use being proposed is reasonable and consistent with the area. With that said, the relief being requested by the applicant is the minimum relief required in order to allow this use.

Mr. Fowler opened the public comment.

No abutters present.

Ms. Sanderson made a motion to grant the variance to Article IV. (B) (2) (b) (lot size) Ms. Morrill seconded. Motion carried 5/0.

Five criteria for granting a variance to Article IV.B (1)(b)(2) for type of road frontage:

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Ms. Sanderson stated that she would like to know the width of Shore Drive. Ms. Dolder stated that they don't know that they have that information. Ms. Smith stated that it was a private road, so it's the applicant's responsibility to provide that information. Ms. Sanderson stated that what she was looking at was RSA 674.41. Ms. Smith stated that they have filed the application and it was to be processed. Ms. Sanderson stated that the reason they were looking at it is in terms of the safety of the town's emergency rescue equipment and personnel. Ms. Smith stated that the Northwood Fire Department had submitted a document by the request of the Northwood Planning board stating the specific information as to what they would need in terms of width to move the equipment around. It is a public document. Ms. Dolder stated that one of the new houses that went up recently was a modular that was brought in by a truck on those very same roads. Ms. Sanderson stated that she would like to see an association in place that is providing maintenance. That would help her be more comfortable in that situation. Ms. Dolder stated that at the last meeting they had indicated that there was discussion about creating an association. Quite frankly, one of the issues is that there is an issue with public access to the community beach. Therefore, some of the residents are hesitant to pay for upgrading a road when the public is using it. The reality is that in this point in time, everybody out there is doing maintenance, because those 4-season people have to get in and out all year long. They have to have their propane delivered and some mode for police and fire. The last few houses that were approved indicate that somebody in the town feels that the fire personnel can get down there, and that there is no question. In this particular application, she under stands the concern with the getting down there, whether you grant it or not, these two people are getting down there. One of the things that makes this application unique, is that nothing is changing, the same two people that access it, are the same two people that will continue to access it. Granting the variance doesn't change it on its face. Some of those other houses were much larger. In granting it, they were permitted to have a much larger use of their property. Ms. Morrill stated that the only thing she worries about with this application is that the private road is a private road and it concerns her. The selectmen want it enforced to upgrade the private roads to be what the ordinance wants. She feels what they've done is good in saying that they asphalt it and try to get it close, but as far as she knows, you might put some asphalt down. Ms. Dolder stated that the ordinance doesn't specify any in between, they are not going to upgrade the road to town standards, that's what they are asking for a variance for. The standards that they are going to upgrade it to, are clearly better than what it is today. Ms. Smith stated that she wanted to make the board aware that any decision that previously occurred has no

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bearing on another ZBA application. Zoning board decisions do not set precedent. Each one is on its own merit. So whatever this board or one previously decided on an application in Harvey Lake, is not necessarily a basis for a decision on a particular application. Relative to the beach, that is something being looked into at this time, but no one could really say if it's restricted to Harvey Lake residents only. She stated that she thought it was, but she's been doing some research and she thinks she might find to the contrary. The beach is a separate issue, and who goes in and out is the same as if someone who owned six of the lots and had 75 people coming to their house every weekend, they would have no control over it. It's not an issue relative to the road frontage itself. Whether or not they are changing who is going to that lot, if it's the same two people, it's really not the basis for the road frontage. The frontage is based on whether emergency vehicles can get there and turn around. That's the basis of the road frontage. Ms. Dolder stated that, first of all, although she agrees that prior decisions do not set a precedent, they are able to, and the court will look to prior decisions in determining whether or not this particular decision is reasonable, based on what the zoning board has looked at. So, they are able to look at prior acts that the board has done to say under those circumstances, and we have similar circumstances, what's really reasonable to allow. In terms of the beach, whether or not it's permitted to have public use or not, the fact of the matter is, the town owns that and if there is public use of that beach, then it is a substantial amount of traffic going over a private road. It does impact the question of whether or not the people living on it should have to pay to upgrade it. Mr. Fowler stated that the previous approvals on applications don't have any bearing on this application because in March the town voted to change the ordinance so that the new homes that were built last year are very different than what are trying to be built this year. Ms. Dolder stated that the change to the ordinance allows the same type of variance. Ms. Smith stated that the difference is that before March the ordinance allowed certain private roads, Harvey Lake Estates being one of them, to be upgraded to a rural road standard, which is a gravel road. In March, the Planning board proposed a change to the regulations that now requires a road to be upgraded for building on a private road to the subdivision standards which is a much different set of standards. It's a 22-foot-wide paved road, and that change was adopted this past march by the voters. Ms. Dolder stated that the applications that have come through since, even prior to the change were requesting variances to upgrade from the gravel road standards. That type of issue has existed in your zoning ordinance for quite a while, it may be a different standard that they needed to upgrade it to, but they still need to upgrade it.

Mr. Fowler opened the public comment.

Kim Mitzell, 96 Shore Drive spoke. She walks by their property every single day with her dogs. She stated that she was thrilled at the thought that they are making improvements. In that neighborhood, there are 4 or 5 abandoned properties, probably people who sought to do the same thing years ago, gave up and left. They have been vandalized and are an eyesore to their abutters. This will only improve the value of my property and everybody else. Second, today as I was walking my dogs past their property, which is adjacent to the boat ramp, the UPS truck coming down the road quite fast, so naturally I wanted to be able to step aside as it was coming, I was walking toward the boat ramp. There was plenty of room in that boat ramp for him to

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have room to get by me, and I did not have to jump into the poison ivy to avoid it. Therefore, if a fire truck or an ambulance had to come down to their property, there is enough room at that boat launch before it starts to taper down to the water, people do it all the time with big trucks and boats.

Bob Strobel, Planning Board Chair, speaking as himself not for the board. He stated that he could answer some questions on the road widths, if the board agrees to hear a non-abutter. The board stated they agree. He stated that they have had multiple applications before the Planning Board in Harvey Lake Estates. One of the questions that has come up has been road width. His mental recollection is that the road width is anywhere from 15 feet, 18 feet, 22 feet and 24 feet. The majority of the roads do not meet town standard.

Mr. Fowler closed the public session.

Ms. Sanderson made a motion to deny the variance Ms. Morrill seconded for discussion.

Ms. Sanderson stated that she motioned for against because she has questions. As far as the road width. If you've been down there, Shore Drive is not the widest of the four widths. She stated that she wants to do the right thing for the emergency personnel, especially in the wintertime. This is for the interest of what is safe for human beings and their safety? Whether it's a child that's had an accident by the water or whatever, those roads are in need of something. It sounds like there is a plan for some improvement, a possible association. Ms. Smith stated that the thought what they were suggesting was the interest to try and start an association, but that's not in place at this time, but it's a process. Ms. Sanderson stated that in her eyes, an association is extremely important, and she would prefer to see that happening before approving.

Ms. Morrill stated that she feels the same. This might push them in the right direction to form an association.

Ms. Vultaggio stated that she agrees, an association would improve any doubts about the road.

Ms. DiMatteo stated that she understands the road concern, but this won't make the road any safer. They will still be using the property the same way. The road exists in the condition it exists in. These property owners cannot be responsible for the width and safety and all the concerns the town has regarding Shore Drive. This property is at the end, next to the beach which, in a real emergency can act as the hammerhead turn around. She sees it as having the criteria that variances are used for. She doesn't see that what they are proposing changes anything regarding public safety. When she was out looking at the property, a couple different times she noted that the trucks were bouncing by with the big boats on the trailer, and she thought to herself that she was glad she wasn't driving at that time. She doesn't see how the addition impacts the road.

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Mr. Fowler stated that the vote in March overwhelming required any new roads to be brought up to subdivision standards. The safety and security of the town is of the utmost importance to public safety. The town voted this in so that emergency personnel would have no problem getting to and from these properties. He doesn't see anything specifically unique that would warrant granting this variance.

Ms. Sanderson asked if could they continue in order to create an association. Ms. Smith stated that they would have to take it as a good faith promise. It could be that they move forward and start the process in that area, but more so weigh it on if it's a reasonable change to the property as far as the road frontage itself. Is this addition, which now makes it a one bedroom, an unreasonable or not a modest enough request from what is being used on this property today. In the sense that, if someone else came in and wanted to put up a 4-bedroom two story house with year-round use, it would increase the number of people going to that site, so you have to weigh it on a number of different factors, that being one of them. But looking at the particulars of what they have submitted as the relief of what they are asking, is it reasonable based on the use that they have today, relative to the road frontage. Will it be more likely that emergency vehicles will go there, will this construction potentially cause fire hazards, but relative specifically to upgrading the road to fire equipment, will the denial impact what substantially the difference is between what they have now, and what they are proposing.

Mr. Fowler stated that an association would be a substantial game changer. With the vote, the way it came out, and the new higher expectation of road standards, he would need something more to put his name on it.

Ms. Sanderson stated that she was voting for the denial based on that it is contrary to public interest because of the private road with no association intact, it is contrary to public interest as far as emergency vehicle and hazard relief, and the property is not unique to warrant the granting of the variance in this situation. The spirit of the ordinance is not observed because there is no road maintenance in place for this private road, and granting the variance will not do substantial justice because this home is so similar to the others on his road at this point, it is not unique in its property foot print. Denying the variance will not diminish the values of the surrounding properties.

Ms. Morrill stated that she was also voting for denial for the same reasons and the road requirements should match up with the ordinance.

Ms. Vultaggio stated that she was in favor of the denial. She stated that they need more information about the road.

Ms. Dimatteo stated that she was voting to not in favor of the denial.

Mr. Fowler voted in favor.

Motion to deny is approved 4/1.

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Five criteria for granting a variance to Article IV.B (1)(c)(1) for length of road frontage that does not meet the zoning ordinance, lot has 100 feet, where 150 feet is required.

Granting the variance would not be contrary to the public interest because:

To be contrary to the public interest, the variance must be unduly, and in a marked degree conflict with the ordinance such that violates the ordinance's basic zoning objectives. To ascertain whether granting the variance would violate basic zoning objectives you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The Applicants are not proposing to construct anything that is out of character for the neighborhood, but instead are simply requesting to construct a modest addition to the home that already exists on the property. This is typical for this area. In fact, even with the addition, the home will be comparable or smaller to the other homes within the area. Furthermore, the majority of the homes within this area have at least two bedrooms. Similarly, no abutting properties will be impacted by the proposed addition because the applicants are able to construct the entire addition on their property while maintaining all of the required setbacks under the zoning ordinance. The property has a natural, wooded buffer from its abutting neighbors. In fact, the lot on the side where the addition is to be constructed, consists of a community beach and the owners of the other direct abutting lot are in support of the proposal. Finally, although the property is located on Shore Drive, a private road, this road has already been heavily built on. In fact, the applicants lot currently houses a residence. This property will not be the first along this road to have recent construction on it. Clearly the road in its current state can support the proposed use without the necessity of being upgraded at this time. The applicants are not changing the use of this property, nor increasing the amount of people that will be using the property. Accordingly, the granting of the relief requested herein shall have no impact on public safety, health or general welfare of the public. As such, the variance relief requested will not be contrary to public interest, but instead will allow the applicants to utilize the property in a reasonable manner.

The use is not contrary to the spirit of ordinance

One of the expressed general purposes of the ordinance is to balance the process of growth, development and change with the need to preserve and enhance those qualities which make Northwood a safe and desirable place to live. The Variance relief being requested by the applicant is certainly in keeping with that general purpose. The underlying use of the property itself is expressly permitted in the zoning ordinance. Amongst the stated purposes of Articles IV.B(1) & (2) of the zoning ordinance is the desire to prevent congestion in the streets, overcrowding and avoid undue concentration of population. The variance relief being requested by the applicant is also keeping with this specific purpose. The property also has a natural, wooded buffer which allows for less crowding in the area. In fact, the lot on the side where the addition is to be constructed, consists of a community beach. Furthermore, Article VII.B(2) of the zoning ordinance specifically allows for the construction of an addition to a non-conforming structure when the expansion is in the direction away from the lot line at issue. That is clearly the situation in this case. Given that the proposed use

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itself complies with the zoning ordinance and the variance relief requested will not alter the essential characteristics of the neighborhood, nor alter the character of the property as it exists today, it is clear that the relief requested does not sacrifice the spirit or purpose of the ordinance, either, either under its general purposes or the specific rationale for minimum lot size and frontage requirements.

Granting the variance would do substantial justice

One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the applicant clearly satisfies this requirement. The property has already been built on and currently houses a residence. The applicant is simply requesting to construct an addition onto the existing home. Although the proposed addition will result in a larger home on the property that currently exists, the applicant will still maintain all of the required setbacks on the property. Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. As stated above, even with the requested relief, the difference between that required under the ordinance and that provided shall not create any adverse effect on the adjoining neighborhood. As previously stated, the property has a natural, wooded buffer from its abutting neighbors. In fact, the lot on the side where the addition is to be constructed, consists of a community beach. Furthermore, the applicants have obtained a letter from their direct abutters expressing their support for this proposal. Accordingly, there will be no adverse impact on the adjoining neighborhood. On the other hand, without the requested variance, the applicants will not have a bedroom or any storage area on this property, therefore, granting the variance will result in substantial justice.

The proposed use would not diminish surrounding property values

The applicant is proposing to construct an addition on their residence by obtaining the proper building permits and in compliance with applicable public health regulations. In fact, the applicant has already obtained a shoreland impact permit and a septic approval. This will also allow the applicants to re-locate the utilities on the property from the shed to the house. The proposed addition itself will not be out of the norm or character for the neighborhood, and it is a use that is clearly permitted under the zoning ordinance. It is also important to note that there are no lots within the community that are two acres in size. Given that the applicants will be able to construct the addition while maintaining all required setbacks from its neighboring property lines, the use will have no adverse impact on neighboring properties, nor will it diminish surrounding property values. Instead, the newly updated residence, with an updated septic system will add value to the general neighborhood. The proposed residence will not be out of the norm or character for the neighborhood. The applicants are simply requesting to construct an addition onto the existing home.

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Literal enforcement of the 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: This property is unique in this area in several ways. First of all, unlike the neighboring properties, it has a natural, wooded buffer from its abutting neighbors. Even given the fact that the property has comparable acreage to many properties in the area, the addition being proposed will not result in the home being the largest in the area. In fact, even with the addition, the home will be comparable or smaller than others in the area. Furthermore, the majority of homes within the area have at least 2 bedrooms. At this point in time, this property does not even have 1 bedroom. In addition, the utilities for this house are located in a shed outside of the home, which is both unique and unusual for this community. As part of this addition, the applicants will be able to re-locate the utilities into the residence. Similarly, the applicants are able to maintain all of the required setbacks for the addition, even with the variance relief requested. The property is also unique in the fact that it abuts the community beach. The beach has been utilized by the general public, which impacts the private road in the area of the applicant’s property. Finally, the relief being requested by the applicants is the minimum is the minimum relief required in order to allow the applicants to construct the addition to the property for a much-needed bedroom and storage area.

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

This property is unique in several ways, including the fact that the residence already exists on the property and the applicants are not requesting a change in the current use. Instead, the applicants are simply requesting an addition, which will be constructed while maintaining all of the required setbacks, even with the variance relief requested. Even with the addition, this shall not be the largest home in the area, but will allow the applicants to have a bedroom and storage area, both of which are reasonable. At this point in time, this property does not even have 1 bedroom. In addition, the utilities for this property are located in a shed outside of the home, which is both unique and unusual in this community. As part of this addition, the applicants will be able to relocate the utilities into the residence. These are clear indications that the use being proposed is reasonable and consistent with the area. With that said, the relief being requested by the applicant is the minimum relief required in order to allow this use.

No fair and substantial relationship exists between the general public and purposes of the ordinance and specific application of that provision of the property because: As stated before, the actual use proposed for this property, a single-family residence, is expressly permitted under the zoning ordinance. The applicants are simply requesting to construct a modest addition to the single-family home. Although the proposed addition will result in a larger residence on the property, the addition will be constructed in a manner that will maintain all of the required setbacks on the property. It is also important to note that there are no lots within the community that are two acres in size, but many lots have much larger homes on

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them. Given that the proposed use will not alter the essential characteristics of the neighborhood or the property, but instead will allow the property to be used for and in the same spirit as permitted, there is no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restrictions on the property. The same can be stated in connection with the requirement to upgrade Shore Drive. The road has already been heavily built upon, some of which include much larger residences. The applicants maintain and plow the section of the roadway in front of their property and shall continue to do so. Although the applicants do not intend to upgrade the road to town standards, they do intend to upgrade their section of road with reclaimed asphalt. It is also important to note that one of the abutting properties is a community beach which has been allowing use by the general public. As part of this use, the general the general public have traveled upon the section of road in front of the applicant's property, causing impact on the road which is not caused by the applicants. Given this, and given the fact that the applicants are not changing their use of the property, there is no fair and substantial relationship between the general purposes of the ordinance and the specific restrictions on the property.

The proposed use is a reasonable one because:

The underlying use of the property itself is permitted in the zoning ordinance. The design of the addition, even with the variance relief requested, exceeds the required setbacks under the zoning ordinance. The design of the addition, even with the relief requested, exceeds the required setbacks under the zoning ordinance, and therefore, shall not impact the neighboring properties. Given that the property has already been built upon and currently houses a single-family residence, the proposed use of the property is clearly reasonable. The variance relief will simply allow the applicants to have a bedroom and storage space, something that it does not currently have. There are other residences within the area that larger than what is being proposed by the applicants, which is a clear indication that the use being proposed is reasonable and consistent with the area. Similarly, the fact that the applicants are not changing their use of this property makes it clear that the addition is reasonable without the road to be further upgraded.

Ms. Morrill made a motion to grant the variance to Article IV.B (1)(c)(1) for length of road frontage that does not meet the zoning ordinance. Ms. Vultaggio seconded. Motion carried 5/0.

CASE 17-13: Jeanne Nerson, 84 Lucas Pond Road, Map 244 Lot 55. Applicant seeks to build a single-family home and is requesting the following variances:

A variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance, lot has .99 acre, where two acres are required.

Jeanne Nerson and Leo Dion were present.

Ms. Nerson stated that she would like to replace the existing mobile home with a double wide, and were requesting a variance to Article IV.B(2)(b) for the lot size.

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Five criteria for granting a variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance, lot has .99 acre, where two acres are required:

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

There is already an existing home on the property which is in very poor condition. Replacing this with a new home would be an improvement to the neighborhood.

The use is not contrary to the spirit of ordinance because:

Although this is not a two-acre lot as required, there has been a home on it since 1986. The property was sold undersized from the town after being leased.

Granting the variance would do substantial justice because:

It would be a new home which would be aesthetically pleasing to the neighborhood. The property has not been well cared for due to the aging owners.

The proposed use would not diminish surrounding property values

It is an old home being replaced by a new, modern home.

The proposed use is a reasonable one because:

This will become our primary residence which will be a great improvement over the existing one. Pleasingly aesthetic to the neighborhood and generating taxes to the town.

Mr. Fowler opened the public hearing. There were no abutters present. Mr. Fowler closed the public hearing.

Ms. Sanderson made a motion to grant the variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance. Ms. DiMatteo seconded. Motion carried 5/0.

CASE 17-14: Dan Moore for Steve Kutftnec, 9 Pleasant View Ave, Map 109 Lot 35. Applicant seeks to build a new two-bedroom single family home and is requesting the following variances:

A variance to Article IV. B(6)(d)(8) for type of road frontage (private road)

A variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance, lot has .19 acre, where two acres are required.

A variance to Article IV.B(1)(c)(1) Length of frontage, lot has 120 feet where 150 feet is required.

A variance to Article IV.A Table IV-1 Minimum setback for the septic field does not meet 20 feet.

A variance to Article IV.A Table IV-1: setback for house is 8.37 feet where 20 feet is required.

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Dan Moore, Scott Bodreau and Eric Kutftnec were present to discuss the application.

Ms. Smith stated that she had a discussion with applicant, standard practice for the zoning board has been that an application is not processed until they have an approved septic whenever there is an undersized lot, and a shoreland permit. The applicant expressed the concern about going forward with the plan prior to having the board review it and decide whether or not they would grant the variance for the septic.

Ms. Smith stated that she suggests that they consider variance on the septic setback, then the applicant can go forward and apply for the shoreland permit.

Five criteria for a variance to Article IV.A Table IV-1 Minimum setback for the septic field does not meet 20 feet.

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

The current septic system is non-conforming due to the age and type. A new two-bedroom system is required for public health. Due to the building and lot sizes, the town septic setbacks were not able to be met. A new septic would protect the public health of the neighborhood and lake.

The use is not contrary to the spirit of ordinance because:

The existing septic needs to be replaced. A new septic would protect the public health of the neighborhood and lake. The spirit of the ordinance is to protect the safety of the community, replacing the septic is in accordance with this goal.

Granting the variance would do substantial justice because:

It would not negatively affect the current conditions; however, it would increase and insure public safety for the neighbors and residents.

The proposed use would not diminish surrounding property values

The existing structure is inhabitable and is in disrepair. In addition, the lot is overgrown and unkept. The proposed project would address both of these conditions, increasing property values. Decreasing potential hazards for the community.

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

At the time this camp was built, it was conforming with any/all town conditions and ordinances. It has been historically non-conforming since new ordinances/conditions were passed.

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

Due to the pre-existing conditions of the neighborhood and the existing houses on the private road, the setbacks are limited due to the lots size and proposed setback.

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Replacing the existing setback will increase public safety for the residents and the neighbors. The proposed location is the best

Mr. Fowler opened the public hearing.

Abutters present:

Dave Elliot was present. He stated that he has lived at 8 Pleasant View Avenue for 16 years. He was a semi caretaker of the property in question for 5 years. This is a beautiful piece of property, it is completely fenced in on all 4 sides, there is no shoreland on it. One of the abutting properties runs along side and is actually on the lake, so please take that into consideration. The length of the frontage is 120 feet, again, in the eyes of the neighbors this is not an issue. On each side of the lot there is a private road that comes in almost all the way down to the water, so this lot actually has two access roads, one is the access road for our side and the other is on the east side. These are roads that we take care of. We plow, we maintain, we fill the holes. The septic field is behind the house, on the higher end of the land. They have plenty of land behind the house to meet the encroachment. The property is unkempt and needs to be torn down, but this will be in the neighborhoods best safety. They are great people. The houses that are down there are from the early 1900's. Again, we have no issues from their standpoint.

Mr. Fowler closed the public hearing.

Ms. Sanderson made a motion to grant the variance, Ms. Morrill seconded the motion.

Ms. Sanderson made a motion to withdraw the motion. Ms. Morrill seconded her motion in order to ask more questions of the applicants.

If this new construction didn't exceed the prior footprint, could the septic be pulled a few feet south, would you even need this variance. Why does that building have to be that size towards the back. Why can't it be moved forward. Mr. Moore stated that the whole house is moved back in order to pull it out the 50-foot setback from the lakefront. In the sense of the square footage of the house, the actual livable space is almost the same size as the original. The applicant pointed out a few things on the plans in order to explain distances. Ms. Sanderson stated that there seemed to be enough room to put the septic in a spot that would not call for a variance. Mr. Moore stated that it seems that way, but it really isn't. Mr. Fowler stated that even if they change the shape of the house, then they would increase the protective well radiuses. Mr. Moore stated that within that ten feet, there isn't any kind of drain. He'd rather encroach the twenty-foot setback from the lot line that the town has in order to protect the foundation. Mr. Fowler stated that the way he saw it, the house is a separate issue versus the septic. If you put it closer towards the proposed building, even if they shrunk it smaller, he's looking at what weighs more, having it within the setback, and now more wells are encroached. It's an existing system, so you are replacing something with a newer system. He doesn't really see anything they can do to change it. A newer system versus a 30-year-old system is a valid request for a variance.

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Ms. Smith stated that the actual distance should be noted on the plan. Is it within the states ten feet? Mr. Moore stated that the state setback is ten feet, that's what that meets, it doesn't meet the twenty feet required by the town.

Mr. Fowler closed the public discussion.

Ms. Sanderson made a motion to grant the variance with the condition that it does meet the state setback of 10 feet. Ms. Morrill seconded. Motion carried 5/0.

Ms. Sanderson made a motion to continue the remaining variances until September 25, 2017. Ms. Morrill seconded. Motion carried 5/0.

Mr. Fowler called for a five-minute break at 9:04 PM

The board returned from break at 9:09 PM

CASE 17-15: Paul Ross, 14 Circle Street, Map 116 Lot 98. Applicant seeks to build a new two-bedroom modular home and is seeking the following variances:

- A variance to Article IV. B(6)(d)(8) for type of road frontage (private road)
- A variance to Article IV.B(2)(b) for lot size that does not meet the zoning ordinance, lot has .2 acre, where two acres are required.
- A variance to Article IV.B(1)(c)(1) Length of frontage, lot has 100 feet where 150 feet is required.

Mr. Ross was present to speak about his application. He stated that he would like to replace an 880-square foot home with a 1280 square foot two-bedroom modular unit. He stated that it would be staying seasonal. He submitted a voluntary merger and a 674.41 application.

Five criteria for a variance to Article IV. B(6)(d)(8) for type of road frontage (private road)

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

By allowing the variance, there will be no change of use to the lot other than what already exists. There will be no change to of road usage, traffic count, town or school services. Granting of the variance would promote the continued contribution to the Pine Point Association which maintains the common areas.

The use is not contrary to the spirit of ordinance because:

The ordinance was not meant to prevent an update to an existing property. This property was developed specifically for its current use and mobile homes have a shelf life. The existing home is at the end of its shelf life. The new building will be built to meet the current building and energy codes which cannot be obtained by renovating the existing structure. The increased square footage of the building does not change the fact that the lot is on a private road. The ability of emergency vehicles, delivery vehicles, and other vehicles will not change.

Granting the variance would do substantial justice because:

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Each of the lots in the Pine Point Association pays dues to maintain the roads, beach, and building upkeep that are used by all the residents in the area. The ordinance was enacted after the lot was purchased. By granting the variance, the property shall continue to be used for the original purpose it was intended for.

The proposed use would not diminish surrounding property values

The existing structure is inhabitable and is in disrepair. In addition, the lot is overgrown and unkept. The proposed project would address both of these conditions, increasing property values. Decreasing potential hazards for the community.

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

The use of the property is not changing. All of the neighborhood and surrounding lots about the private roads servicing the area and it would be unobtainable to change this. All of the lots are of similar size and constraints.

Mr. Fowler opened the public hearing. Abutters present: George Hatfield Mr. Hatfield stated that the lots have very old mobile homes that you can only do so much with, it's much nicer to replace them.

Mr. Fowler closed the public comment.

Ms. Smith reminded the board that the regulation changed in March. Mr. Ross stated that Circle Street was 25 feet wide.

Ms. Sanderson asked if that road width was recorded, and did they have a copy of that. Ms. Smith stated that they can continue and ask for additional info. Mr. Ross stated that this development has their association recorded and is a formal group. Mr. Hatfield stated that it was called Pine Point Association and was recorded with the Registry of Deeds.

Ms. Sanderson stated that she would like to request additional information concerning the association and the road widths. She would like to see definitive information concerning the widths of Cole Road a Circle Street. She stated that specifically she would like to see copies of the Pine Point Road Association documents.

Ms. Sanderson made a motion to continue the variance to Article IV. B(6)(d)(8) until September 25, 2017 pending more information. Ms. Morrill seconded. Motion carried 5/0.

Ms. Sanderson made a motion to continue Case 17-15 until September 25, 2017. Ms. Morrill seconded. Motion carried 5/0.

Proposed 2018 budget

The board chose to level fund the budget at \$2,750.

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Ms. Morrill made a motion to accept the 2018 proposed budget of \$2,750. Ms. Vultaggio seconded. Motion carried 5/0.

Ms. Smith reminded the board about the upcoming Law Lecture series in Concord on October 14. She also reminded the board that the lawyer would be speaking to them an hour before the next meeting at 5:30PM.

Ms. Sanderson made a motion to adjourn at 10:00 PM. Ms. Dimatteo seconded. Motion carried 5/0.

Respectfully Submitted

Susan M. Austin, Land Use Secretary