

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

Chairman Roy Pender calls the meeting to order at 7:05 p.m.

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

ABSENT: Curtis Naleid, and Alternate Robert Bailey

Mr. Pender states that there are only four members of the board present this evening and he asks the applicant if they would like to proceed, or the case could be postponed until next month.

Atty. Hodgdon is present along with the applicant David Elliot. Atty. Hodgdon states that they do not have any objection with proceeding with the case this evening with only four board members.

VOTING MEMBERS: Roy Pender, Tom Lavigne, Bruce Farr, and Doug Pollock.

MINUTES:

January 13, 2014

Mr. Farr makes a motion, second by Mr. Lavigne, to accept the minutes of January 13, 2014 as amended, as follows:

Page 1: Change: Roy to *Pender* ...

Motion passes unanimously, 4/0.

CASE: 13-04(R): 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.

Present are Atty. Hodgdon, Mr. and Mrs. Elliot, Atty. Hogan, Abutters Charles Brown and Victoria Parmele, Lance and Sandi Barton, Bruce Hodgdon,

Mr. Pender states that the board met January 13, 2014, and motioned to grant the rehearing request for David Elliot, 8 Pleasant View Ave. Map 109, Lot 38.

Atty. Hodgdon states that the reason for the meeting is to address the Elliot special exception for an upward expansion on the existing structure, on property owned by David Elliot. He states that before he begins with the special exception criteria he would like to make the board aware of some outstanding issues that were previously discussed at the December 27, 2013 meeting. He states that the outstanding items have no bearing on this case; however, he would like to address these items as the board had previously expressed concern.

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Atty. Hodgdon states that one outstanding issue is the septic system. He notes that NHDES has now approved a septic design.

Atty. Hodgdon states that the maximum height limitation is 35' and the proposal is for 29 ft. He states that there is no increase to any other non-conforming aspect of the structure or lot. The proposal is not going to increase the septic load, the setbacks, or any aspect of the existing non-conforming structure other than upward expansion.

Atty. Hodgdon explains that at the previous hearings Mr. Elliot provided letters of support from three of the four neighbors and he recently contacted them again relative to this hearing. Atty. Hodgdon notes that abutters Sandy and Lance Barton are present. He states that the abutters have indicated that nothing has changed and they believe there are no adverse impacts. He asks the board to accept the previous letters provided. He notes that the other abutters were unavailable to attend tonight's hearing. Atty. Hodgdon states that the final abutter is Mr. Brown. Pictures are provided showing the existing structures on Mr. Brown's properties. Atty. Hodgdon explains that one photo is from the area of Mr. Elliot's proposed second story and looks back on the abutting property. He notes that this was provided so that members can see what exists. He states that it is not reasonable to believe that Mr. Elliot's proposal will have a negative impact on the Brown's property in any way. Atty. Hodgdon states that the impact of Mr. Elliot's expansion on the light, air, or view on the existing shack is inconceivable. He adds that realistically there does not appear to be a significant argument based on Mr. Brown's property.

Atty. Hodgdon states that there are three criteria that must be met and all of the criteria have been met.

B) if an upward expansion it shall not exceed the maximum height limitations specified in this Ordinance.

Atty. Hodgdon states that the height of the expansion is 29 ft. He states that many residences on the perimeter are two stories.

C) the expansion shall not increase any other non-conforming aspect of the structure or lot.

Atty. Hodgdon states that Mr. Elliot has received an approval from NHDES for the septic system. He adds that they are not adding a bedroom or a bathroom. He states that they are only expanding a small area and the expansion is in no way increasing the use of the septic system.

A) if an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.

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Atty. Hodgdon states that most of the members have visited the area and there is no dispute that the area is small and the proximity to other lots is tight. He suggests that the sense of overcrowding in the area is really because of Mr. Brown's use of his property. He explains that there are several stored, non road worthy vehicles along Pleasant View Ave., which gives a sense of confinement to this area. Atty. Hodgdon provides additional pictures of the property. He explains that these pictures depict waste and salvage around the building and residence. He states that these factors contribute to the overcrowding. He states that he is providing these pictures as an aid to put the area and the overcrowding factor into perspective. He explains that because the expansion proposal is going up, it will not add to the feeling of the overcrowding as they are not building outward. He notes that there are currently some building materials on Mr. Elliot's lot, and these items will not be there any longer than necessary.

Atty. Scott Hogan is present representing abutters Charles Brown and Victoria Parmele who are also present.

Atty. Hogan states that based on the testimony given tonight the special exception criteria have not been met. Atty. Hogan states that with all of the testimony it seems simple in that the criteria for an upward expansion of structure cannot have any impact on the surrounding properties. He states that board members are entitled to rely on their own personal judgment and experience and based on that, and the testimony previously provided, the board felt that the applicant had not met the criteria. He states that if the decision was taken to a higher level, there is nothing in the record that could possibly jeopardize the denial.

Atty. Hogan refers to a memo from former Assistant Building Inspector David Copeland. He explains that this memo mentions Mr. Copeland visiting the Elliot property and at that point realized that the owner had begun construction of a second story addition and the contractor had opened the roof, which was the reason for water entering into the basement. He states that the property owner began work without seeking the necessary permits, and it was later noted that it would be necessary to apply for a special exception and variance. He continues to explain the responsibilities of land owners to have permits, and permission from the town before proceeding with construction. He states that it is clear that the project began without these permissions and no request was made for a building permit.

Atty. Hogan mentions that his clients have indicated that there was a basement also added to the property, although he cannot tell if there was a prior expansion to the structure. He adds that he cannot find any evidence that this

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was an authorized expansion. Building Inspector Charles Smart states that in 2004 the owners added a foundation under the property.

Mr. Farr requests that Atty. Hogan speak directly to the special exception for this case.

Atty. Hogan states that the board determined that the special exception criteria was not met last time relative to adverse impact as the board denied the special exception based on the written and oral testimony provided. He explains that the board determined that specifically the overall impact was met, noting the increase of overcrowding of the area, with the proximity of the buildings in the area to be very close together.

Mr. Farr states that it is his understanding that a rehearing is a “do-over”. Atty. Hogan replies that this board made a decision and decided that the special exception criteria was not met based on the evidence; then granted a motion for rehearing. He adds that often times when a ZBA grants a request for a rehearing, the board articulates why they are granting the request and the only thing that he has to go by is the board’s January 13 minutes where the board granted the rehearing. He states that it is his opinion that the original decision was within the authority of the board and there is no reason that the board should change their decision. This is based on the fact that no new information has been provided for the motion for the rehearing, which would change the basis of the board’s January 13 decision.

Mr. Pender requests that Atty. Hogan tell the board why he believes there is an adverse impact.

Atty. Hogan states that the board is familiar with the area and the configuration of the road. He states that there is nothing in the record that changes anything. He states that the area is still overcrowded, the houses are still close together, the upward expansion would create an impact in the same way the board concluded it would in December. He notes that much testimony was stated regarding the Brown’s existing structure; however, the Brown’s property is a valuable piece of property that can be sold, or improvements can be made to it. What is occurring is an immediate, direct impact for which the current status of the structure does not matter. He states that tonight the subject of the application is Mr. Elliot’s property not the Brown’s property. He explains that the language in the ordinance is very clear in that an upward expansion shall not have an impact on any neighboring properties. He states that the board’s decision was made because the board knew what the neighborhood looked like and zoning members have the authority to rely on their own judgment and experience when reviewing cases. He states that at the prior meeting the board determined that it did not meet the criteria based on

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specific knowledge and facts in the record. He adds that based on the record, he has heard nothing tonight that the board should overturn their original decision.

Ms. Parmele states that relative to new information, Mr. Elliot has an approved septic design for a system that he does not plan to install. She states that the existing condition of their structures could go away as they want to upgrade the property and it has been a concern for them. She states that the impacts are temporary on their property; however, with the Elliot proposal, the impact is permanent. Ms. Parmele continues and reads a letter, which is submitted for the record.

Atty. Hogan states that looking at the record and thinking of the comments from the board members, everything that has happened to this point would be a defensible record. The record through tonight supports the board's original decision to deny the special exception; the denial is based on all written and oral testimony and the criteria have not been met. Atty. Hogan reads the board's notice of decision from the original hearing. He states that the record to date supports the denial of the special exception and nothing new has been presented to support a contrary decision.

Atty. Hodgdon states that a single point which indicates a negative impact of overcrowding does not meet the criteria for granting the special exception. He states that to rubber stamp a prior decision is poor advice. Atty. Hodgdon states that Mr. Elliot is not expanding in any way as the proposal is an upward expansion of the structure. He states that the structure is not going outward; it is not crowding anything, and is not getting closer to anything, it is only going up.

Atty. Hodgdon refers to Ms. Parmele's statements relative to NHDES and the septic system. He states that NHDES has determined that the septic system can handle the proposed expansion; he has heard nothing to the contrary. He adds that NHDES is the qualified entity to determine if the septic system is satisfactory.

Atty. Hodgdon states that the builder Derek Bickford is present this evening. Atty. Hodgdon states that despite what has been stated, the building inspector never informed the builder that a special exception was required when he applied for the permit. He adds that the law is clear that the town has an obligation to provide sound information. He states that Mr. Elliot is here now and has gone through the process. He states that the issue now is what is the negative impact to the neighboring properties. He states that the septic system has zero basis for adverse impact; it is sheer speculation as Mr. Elliot is not adding any bedrooms. The house is a two bedroom and will remain as such. He

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states that the overcrowding issue is not valid as they are not coming any closer to any other buildings, they are only going up 5-6 ft., which is less than the ordinance allows.

Sandi Barton, abutter, states that she has personally lived in her house for 31 years. She has seen people come and go. The few people that have owned the cottage have enjoyed it for what it was meant to be. She states that she knows the neighbors, there are no problems typically. She states that she dislikes the current situation between the neighbors. She states that someone wants to better their property and add a small portion of space. She does not feel like they are hurting anything. She notes that this cottage has been there for many years and the owners have a right to make their cottage beautiful.

Bruce Hodgdon, (not an abutter) asks to speak to the matter and Chairman Pender allows. He states that the board is to make sure that the character of the community is right and the proposal would not decrease property values. He states that the Elliots have lived here for 13 years and they are trying to bring their dwelling into the character of the area; they should be allowed to do so.

At this time, Mr. Elliot reads a letter into the record.

Ms. Parmele states that they have been wrestling with this issue for seven months. She explains that the spirit of the ordinance and the criteria of the special exception speak to impacts to the abutters. She states that there are impacts, not issues, for this application; there is an impact for her and Mr. Brown. She notes that Mr. Elliot's plans for his property will impact Mr. Brown's property now and in the future. She states that the purpose of the ordinances is to protect against this. She adds that the septic system is the crux of the matter for her and Mr. Brown. She states that this is an ethical issue to expand the use of a property at the expense of a neighborhood.

Atty. Hogan states that Atty. Hodgdon has stated that Mr. Elliot is proposing an expansion to build up. The ordinance speaks to an upward expansion and that it shall not have any impact. He makes additional comments on the existing septic system and notes NHDES approved a unique system, and Mr. Elliot has no intention to install the system at this time.

Attorney Hogan states that Mr. Elliot has aspirations for his property and so does Mr. Brown. He states that it comes down to the ordinance and the special exception criteria. He asks board members to look back at the prior decision, which is based on board experience; there is nothing factual and different presented tonight.

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Atty. Hodgdon states that the fact is that the condition of the abutting property is relevant to determination of adverse impact, and there is a right to credibility that abutters are adversely harmed, when in fact, in this case, the condition of the abutting property does not allow for it.

Bruce Farr states that he has asked all parties for information in favor of or opposed to the granting of the special exception. He states that all requests for a special exception must meet all three criteria and the board must grant or deny.

Bruce Farr states he will make a motion. He provides his reason for each of the three sections in the ordinance. *(c) the expansion shall not increase any other non-conforming aspect of the structure or lot.* Mr. Farr states that this criteria has been demonstrated to have been met. *(b) if an upward expansion it shall not exceed the maximum height limitations specified in this Ordinance.* Mr. Farr notes that it was stated by Atty. Hodgdon that this upward expansion will not exceed the maximum height limitations of 35 ft. *(a) if an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.* Mr. Farr states that there is not adverse impact to the neighboring property (emphasizing *adverse*) and there has not been any relevant testimony to show that there is or will be adverse impact. He adds that it is clear that the upward expansion is not adding to the septic load. Testimony has been provided that there is no additional outward expansion. He states that he has visited the area and believes that the upward expansion is within the character of the neighborhood. As far as surrounding properties, he adds that he does not believe this proposal towers over others, and states that he does not see that it will cause any shadows or blocking of light, and no testimony has been provided that it will block the view of the lake. He adds that no testimony has been provided that it towers over the neighboring property. He states that there is no adverse impact, and states that **all criteria have been met and therefore, the board must grant the special exception.**

Mr. Pollock seconds the motion.

Mr. Lavigne comments that the board is not here to deal with matters between neighbors. He states that this is one of the hardest decisions that he has had to make. He states that per the ordinance, one of the criteria to be met is that there will not be any adverse impacts and although the area is crowded, it does not meet the criteria in the ordinance relative to adverse impact.

Roll Call Vote:

Mr. Farr – yes

Mr. Pollock – yes

Mr. Lavigne – yes

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Mr. Pender – yes

Motion passes unanimously; 4/0.

Internal Business

Ms. Smith states that the assistant building inspector is working on an ISO certification for the town. She is requesting permission to disclose each individual name and occupation of the board members. Mr. Smart further explains that currently the town's rating is at a 6 and by completing the ISO he hopes that the rating will be better, possibly a 3-4.

Adjournment

Mr. Farr makes a motion to adjourn. Second by Mr. Pender. Motion passes unanimously at 8:32 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary