

**Town of Northwood
Zoning Board Adjustment
August 25, 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:

July 21, 2014

Mr. Pollock makes a motion, second by Mr. Farr, to approve the minutes of July 21, 2014, as written. Motion passes unanimously, 5/0.

Case #14:09: Jeff Huntington, 34 King Rd. Map 121, Lot 1.

Applicant seeks the following relief from the Northwood Development Ordinance to construct a seasonal camp on a non-conforming lot with no road frontage:

- Variance to Article IV (B)(4) for setback – septic;
- Variance to Article IV (B)(2) for lot size;
- Variance to Article IV(B)(1) for road frontage – length;
- Variance to Article IV (B)(1) road frontage – type of frontage;
- Appeal to RSA 674:41 for private right of way

Variance to Article IV (B)(4) for Setback – Septic

Mr. Pender states that typically the ZBA requires a state approved septic system before granting a variance. He explains that per the town's ordinances, the building inspector cannot allow the state to approve a septic system until he has approved the septic system; however, with this case this cannot be done until a variance has been granted allowing the system to be installed within the setback.

Eric Buck, landscape architect from Terrain Planning & Design, is present along with the applicants Jeffery and Erylan Huntington.

Mr. Buck explains that the existing property is approximately 4/10 of an acre with an existing building with a footprint of 630 sq. ft. He states that there is also an existing septic tank and field with unknown conditions. He states that there is dense vegetation along the shoreline with some wetlands through the property. He adds that the existing cottage and septic system do not meet the

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current building codes. He states that the intent is that the cottage will be torn down and the septic system will be renovated and relocated. He adds that this currently is a seasonal cottage and it will remain as a seasonal cottage, not used during the winter months.

Mr. Buck explains that the driveway is gravel and will be upgraded to allow for easier vehicle access onto the site.

Mr. Buck explains that the proposal is to construct a seasonal cottage with decks, 1,750 sq. ft. He states that the reason for the variance is because the leach field will be 15' from the house and 9½' from the side yard setback, where 20' is required. Mr. Buck states that the applicants have looked into other alternatives for the location of the leach field and septic. Between the lake side, wetlands setbacks and a high seasonal water table, the 20' side yard setback is the only reasonable location for the leach field. He states that this is consistent with the neighborhood. He adds that the abutter to the east is also within the side yard setback. He states that there will be no additional demands to the area, the public utilities, or right of ways.

Mr. Pender asks why the proposed location is the only possible location. Mr. Buck replies that there is really limited space due to the shoreland and wetlands setbacks. He states that placing a chambered system under the driveway was not an option due to the seasonal high water table which would require a mounded system. He notes that the grading required on the shoulder of the mounded system also contributes to space limitations. Mr. Buck states that this proposal would be more environmentally responsible and would be less impact to the wetlands and lake setbacks.

Mr. Farr asks if the proposal is to increase square footage of the cottage. Mr. Buck replies yes. Mr. Farr states that the septic system could go outside the setback if the size of the cottage was not being increased. Mr. Buck replies that the septic system would be able to fit on the property if the square footage was not being increased.

Mr. Farr asks why the proposal is for the expansion of the cottage. Mr. Buck replies that it will allow for the property to be more usable. He states that at this time the cottage is only 2 rooms and the proposal will create a reasonably sized bedroom, separate bathroom, a kitchen, dining room, deck, and screen room. Mr. Pender asks if the bedroom area is being increased. Mr. Buck replies no, there will still be only two bedrooms.

Mr. Buck states that they have received NHDES approvals for shoreline impact. In addition, the project is under the 20% stormwater management limit for

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impervious surfaces. He states that currently they have approximately 9% and this will increase to 19% including the cottage, deck, roofline, and driveway upgrades.

Mr. Naleid asks if the proposed square footage is all on one floor. Mr. Buck replies that the 1,750 sq. ft. is the physical footprint of the site and does not include a loft area above.

Abutter Steve Decatur is present and does not have any comments at this time.

5. Variance Criteria

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

Mr. Buck states that granting the variance will not be contrary to the public interest because it will provide a safe useable subsurface septic system for the owners, which will treat the gray and black water from the proposed cottage.

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

Mr. Buck states that this is an existing non-conforming lot that was a lot before the ordinance. Because of the limited size of the lot and limited space for the proposed uses, they feel it is not contrary to the original intent.

3. Granting the variance would do substantial justice because:

Mr. Buck states that granting the variance would provide the owners a safe means to discharge.

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

Mr. Buck states that the proposal does not encroach adversely to the abutting properties. He notes that there is one abutting property with a leach field within the side yard setback; therefore, they feel that it is consistent with what is occurring in the neighborhood based on the size of the lots.

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. Buck states that literal enforcement would require that the leach field and septic system be located in another location on the property which would likely fall within one of the wetlands setbacks and would have an adverse effect on the surrounding wetland areas as well as the lake.

Mr. Pender asks if this is the only area on the property where the septic system could be placed. Mr. Buck replies yes.

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Mr. Lavigne makes a motion, second by Mr. Farr, to grant the variance based on the fact that all 5 criteria have been met.

A discussion is held regarding a conditional approval. Mr. Farr states that typically there is a state approved septic design prior to approving a variance. Mr. Pender states that he feels that the board should grant a conditional variance pending state approval. He adds that if the state does not approve the proposed design, then the applicants will need to reapply to the board.

Mr. Lavigne asks if the application has been sent to the state and Mr. Buck replies that the application is ready to be sent; however, it cannot be sent until approval is received from the board.

Mr. Lavigne amends the motion, second by Mr. Farr, to grant the variance based on the fact that all 5 criteria have been met, with the condition that state approval be obtained, per the plan provided.

Mr. Lavigne states that the proposal is a good plan and the proposed location is the only area where the system could be placed.

Mr. Farr states that the dwelling is a seasonal dwelling. He adds that the current septic system is a limited quality system. He states that 600 sq. ft. of living space is marginal for living space today even for a camp. He explains that he was concerned with doubling the living space; however, the site location and size will not change the septic system encroachment. He states that the proposal is upgrading the structure to current codes and the upgrades to the septic system protect the lake. He feels that the use will be maintained as a seasonal use and is a net gain.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock - in favor

Mr. Lavigne - in favor

Mr. Naleid - in favor

Mr. Pender - in favor

Motion passes unanimously; 5/0.

Variance to Article IV (B)(2) for Lot Size

Mr. Pender states that the ordinance requires two acres and asks if there is any possibility of expanding the acreage. Mr. Buck replies no. Mr. Naleid asks what has been looked into regarding the expansion of the property. Mr. Buck states that there is undeveloped property to the south of the existing lot; however, nothing is for sale in the size needed. In addition, he states that it would also

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be a substantial financial burden to the property owners to make them meet the current standard when this is an existing non-conforming lot with a seasonal cottage that has been around for 60 +/- years.

Mr. Pender asks if there are any comments from abutters. Mr. Decatur does not have any comments relative to this application.

5. Variance Criteria

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

Mr. Buck states that this is an existing lot of record that was developed prior to this ordinance being in effect.

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

Mr. Buck states that the ordinance specifically says that new lots are required to be two acres. He adds that this lot has been in existence for 60 years and the intent of the project still meets the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Mr. Buck states that granting the variance would allow the project to move forward and the lot to remain as is without having to do further lot line adjustments.

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

Mr. Buck states that there are abutting properties similar in size and nature that do not meet the current standards so this is consistent with the theme of the neighborhood.

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. Buck states that literal enforcement would cause an unnecessary financial burden for his clients causing them to purchase additional property and merge it with the existing lot to meet the current standard of 2 acres.

Mr. Farr makes a motion, second by Mr. Lavigne, to grant the variance for lot size based on the fact that all 5 criteria have been met.

Mr. Farr states that this is a seasonal dwelling. He states that 600 sq. ft. of living space is marginal for living space today even for a camp. He states that the proposal is upgrading the structure to current codes and the upgrades to the septic system protect the lake. He feels that the use will be maintained as a seasonal use and is a net gain.

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A discussion is held regarding the term “seasonal”. Mr. Naleid states that the current dwelling still needs to meet the current codes and the structure could be occupied year round; nothing in the ordinance is restricting the owner to a seasonal dwelling. Mr. Farr states that if the applicant would like to change the cottage to a year round home then they must come back to the board. Ms. Smith states that has been the past practice of this board. She adds that the structure will be built to year round standards.

Mr. Lavigne asks about the difference in criteria that separates “seasonal” to “year-round”; everything stays the same. Ms. Smith explains that the issue is RSA 674:41 specifically addresses the use of the building that is permitted and the access to it. She notes that there is no road frontage relative to the number of feet, and since there is zero; it does not meet the type of frontage. She states that there are three issues relative to access. The change from a lesser seasonal use to having a road that is accessed all year by the property owner and she notes that RSA 674:41 addresses the matter of access for the town’s emergency services.

In addition, Ms. Smith states that this is on a right of way. The applicant has asked for relief from the ordinances based on a seasonal use. She states that there was no research done on the right of way. She states that some deeds give a right to cross over someone else’s land but do they have the right to make any changes to the right of way including widen or upgrade, and whether there area metes and bounds descriptions, etc. She states that all of these factors may affect the decision for the access. The board’s decision is based on the application, which notes a seasonal camp. Ms. Smith notes that the public notice indicated the project was for a seasonal camp.

Further discussion is held regarding the structure being a seasonal summer or seasonal winter camp. Mr. Decatur states that this is a deeded right of way through his property. He states that there is nothing noted as seasonal, in fact, the access can be used and is used all year round. He explains that the maintenance is reasonability; to care for and maintain what exists. He states that typically these rights of way are about 15 ft. wide. He adds that this right of way ends on Willow Lane with footage that is approximately 50 ft. so there is 50 ft. of road frontage on Willow Lane.

Mr. Pender asks who does the maintenance on these roads. Mr. Decatur replies that Mr. Huntington would do the maintenance and then there are other times when he does some maintenance as they have used the road on occasion to access their woods. He adds that Willow Lane and Ober Rd. are all private roads and all of the residents in that area do the maintenance.

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Ms. Smith states that what is in the deed is what is legal. She states that the only rights that anyone has is what is in their deed. Mr. Farr notes that the deed has been provided, which specifies the use, pass and repass, and maintenance.

Ms. Smith states that the applicants have been working with the town over a period of several months to get as much information to the board as possible to make the application complete.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Variance to Article IV(B)(1) for Road Frontage – Length

Mr. Pender states that the ordinance requires 150' of road frontage. He states that this property does not have any road frontage.

Mr. Lavigne asks about the status of King Rd. Ms. Smith states that when emergency management system went in to place, all private roads were given road names as well as driveways beyond a certain length. She states that this is a right of way and the access is via Willow Lane, a private road.

5. Variance Criteria

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

Mr. Buck states that this property has a deeded right of way that existed for over 60 years. Allowing the construction of the new seasonal cottage will not create any greater demand on public utilities and services.

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

Mr. Buck states that denial of the variance would require the applicants to continue to use the existing seasonal cottage that does not meet the current building, health, and safety codes.

3. Granting the variance would do substantial justice because:

Mr. Buck states that granting the variance will allow the applicants to continue the use of the access through the right of way property as it has been doing for numerous years.

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

Mr. Buck states that other abutting properties also have right of ways along the private road to the public road.

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. Buck states that it will require the property owners to maintain the use as it is currently, in a property that does not meet the current building, health, and safety codes as well as require them to purchase more property to gain the access on the right of way, which would cause a financial burden.

Mr. Naleid makes a motion, second by Mr. Pollock, to grant the variance for road frontage-length based on the fact that all 5 criteria have been met.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Variance to Article IV (B)(1) Road Frontage – Type of Frontage

Mr. Pender asks why there are two variances for Article IV (B)(1). Ms. Smith states that this variance is necessary because there needs to be 150 ft. linear feet. She notes that there are many different types of road standards that must be met. A private right of way is not on the list; a private road can be upgraded to the rural road standards and the Class VI road can be upgraded to the town road standards, per subdivision regulations. She states that the applicants can upgrade the road to town road standards, which would be an extreme measure. Mr. Pender states that it is not listed in their deed. Ms. Smith states that the variance is a request for relief from the requirement to bring their right of way up to the town road standards.

5. *Variance Criteria*

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

Mr. Buck states that access to this property has been this way for over 60 years.

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

Mr. Buck states that the variance would allow the property owners safe access

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to their property just the same as the other residents along the roadway.

3. Granting the variance would do substantial justice because:

Mr. Buck states that granting the variance will allow the applicants to continue to have access to their property.

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

Mr. Buck states that other abutting properties have access along the same right of way.

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. Buck states that it will require the property owner's substantial financial burden to bring the road up to town standards.

Mr. Pender explains that this is hardship to the land. Mr. Farr asks what is unique with this right of way and access compared to someone on a private road having to upgrade it to town standards. He states that it was previously noted that this is a right of way, which is unique and that this parcel is at the end with none after so even to upgrade the road this property is still at the very end. Mr. Buck agrees with the notations from Mr. Farr.

Mr. Farr makes a motion, second by Mr. Lavigne, to grant the variance for road frontage-length based on the fact that all 5 criteria have been met.

Mr. Farr states that it seems logical to not upgrade this area of the road just to meet the standard; there is no gain.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock - in favor

Mr. Lavigne - in favor

Mr. Naleid - in favor

Mr. Pender - in favor

Motion passes unanimously; 5/0.

Appeal to RSA 674:41 for Private Right of Way

Mr. Pollock notes that this is an increase of the footprint. He states that the proposal is to double in size; however, a two story structure would allow the applicant to remain within the existing footprint. Mr. Pollock states that the board has been consistent with cases of undersized lots, they remain on the

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existing footprint. He asks at what point the board will be addressing this matter for this case.

Mr. Buck states that the existing cottage has a ground footprint of 630 sq. ft. The proposed structure will have a footprint of 1,750 sq. ft. including the decks. He states that the tradeoff is that they are moving the closest point on Pleasant Lake back approximately 14' from its current location. He states that this is sliding the entire structure back with a counter balance of trying to increase the square footage to allow the property owners a more useable seasonal cottage. He states that if they were to remain on the existing footage it would be a greater impact towards the lake. Mr. Pollock asks how this would impact the lake. Mr. Buck replies that the renovation is becoming more conforming because it is farther from the lake.

Mr. Naleid states that with the expansion and the locations of the wetlands and shoreland protections, the septic system is being forced into the setback; the road is existing, frontage exists, and access; these items are the same as they have been.

Mr. Pender states that any discussion relative to the expansion should have been done prior to the discussion for this variance. He adds that they have already received a state approval for the shoreland.

Mr. Pender states that RSA 674:41 gives the obligation to the zoning board for an appeal from being required to have everything on a town road.

Building Inspector Charles Smart explains that 674:41 is applicable when a building permit is requested for a structure on a private or Class VI road. He states that this situation does not have either. He states that this is a private road to a right of way with a right to pass and repass; there is no road frontage.

Mr. Pender reads the criteria for the ZBA to grant relief under RSA 674:41. He states that when an application does not meet the criteria in section 1, the ZBA may grant permission to build on a lot which does not fall into the criteria in section 1 if it makes the following findings:

1. *Enforcement of the statute would entail practical, difficult or unnecessary hardship; and*
2. *The circumstances of the case do not require the building, structure or part thereof to be related to the existing streets; and*
3. *The exception to the statute is reasonable; and*
4. *The issuance of the building permit would not tend to distort the official map or increase the difficulty of carrying out the Master Plan; and*

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5. *Erection of the building will not cause hardship to future purchasers or undue financial impact to the town.*

Ms. Smith refers to item 2 and states this is where the seasonal usage may come into play. She states that with a year-round home the residents would need to have access on a daily basis; with a seasonal dwelling the requirement to access and egress may be different and may not have the same access and egress needs.

Mr. Naleid states that if this application is approved the municipality is not taking any responsibility to guarantee passability or be responsible to get to the property; the owners are taking all of that responsibility upon themselves. Ms. Smith replies that is correct and a waiver of liability, "Agreement and Release" would be necessary for the owner to sign, #3.

Ms. Smith refers to #4 and states that the town does not have an official map per the state's definition.

Mr. Farr states that he feels that there has been enough testimony for the board to make the required findings.

Mr. Farr makes a motion second by Mr. Lavigne, to grant the relief to RSA 674:41 for a seasonal dwelling.

Mr. Farr states that the applicant has worked with the town and there were many questions answered with the material previously provided in the board's packets.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock - in favor

Mr. Lavigne - in favor

Mr. Naleid - in favor

Mr. Pender - in favor

Motion passes unanimously; 5/0.

Case #14:10: 598 First NH Turnpike, LLC. 598 First NH Turnpike. Map 222, Lot 23.

Applicant seeks a special exception to Article VI, Section (A)(4)(a) of the Northwood Development Ordinance, to allow impact to the wetlands and buffer in the wetlands conservation overlay district. Property owned by Peter Horne.

Scott Frankiewicz, LLS, from Brown Engineering and Surveying, is present for this case.

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Mr. Frankiewicz states that he appeared before the board last month for a variance to build on this property, in the upper front portion, which was denied. He states that he is now applying for a special exception. He states that he has met with the conservation commission and they provided comments in support of the project to this board.

Mr. Frankiewicz states that a special exception is necessary due to the fact that there will be impact to the wetland buffer and wetland for the crossing to access the 1.4 acres in the rear of the property in order to meet for 1 acre of contiguous uplands. He explains that the proposed crossing is 12 ft. wide and will match an existing culvert up stream. There will be 2:1 side slopes to minimize the impact. He adds that the driveway will remain as gravel. Mr. Frankiewicz states that there is approximately 1,800 sq. ft. of wetland impact and will be sent to NHDES for review. He adds that he will be meeting with the planning board this Thursday evening for a proposed two lot subdivision.

Mr. Naleid asks if there is a state approved permit. Mr. Frankiewicz states that the permit has been submitted to the conservation commission and forwarded to NHDES.

Mr. Pollock asks if the crossing is 20 ft. from the neighboring lot. Mr. Frankiewicz replies that the owners are the same. He states that he believes that it is 15 ft. Discussion ensues regarding the driveway. Ms. Smith states that a condition would need to be added to the approval that the driveway would need to remain as a gravel driveway.

Ms. Smith states that the wetland application is in process with the conservation commission and has not been signed off on to date.

USES ALLOWED BY SPECIAL EXCEPTIONS

Special exceptions may be granted by the Board of Adjustment, upon notice and hearing as prescribed in RSA Chapter 676, for the following uses within the Wetlands Conservation Overlay District and its setbacks:

(a) Those uses essential to the productive use of land not within the Wetlands Conservation Overlay District shall be allowed by Special Exception. Those uses include, but are not limited to: the construction of roads, other access ways, utility rights-of-way and easements, including power lines and pipelines, with adequate provisions where called for, for the continued, uninterrupted flow of surface run-off water. The ZBA shall grant a Special Exception, provided the following are met:

[1] after the applicant meets with the Conservation Commission, findings by the Northwood Conservation Commission regarding the proposal are submitted

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with the Special Exception application, are reviewed by the ZBA, and are made part of the record of the case.

Mr. Naleid states that findings from the conservation commission have been provided and reviewed.

[2] dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setbacks, even if this requires adjustments in design outside of this overlay district.

Mr. Naleid states that it appears that the crossing is in the narrowest point and the applicant is looking to minimize the impact to the wetland by crossing in the narrowest point.

[3] there shall be provisions made to restore the site as nearly as possible to its original grade and condition.

Mr. Frankiewicz states that the crossing will be designed to match the existing grades as close as possible providing appropriate cover for the culvert. Mr. Naleid asks if the building department oversees the work of the project. Ms. Smith states that this is a part of the wetlands permit process.

[4] a state wetlands permit shall be obtained when required.

Ms. Smith states that the permit is in process and the board will need to do a conditional approval special exception.

Mr. Pender asks if there are any abutters present.

Abutter Chris Quinn states that everything needs to be done as proposed and meets the criteria.

Abutter Leigh Hansen states that she agrees with Mr. Quinn and adds that it is important that everything is done correctly, it meets the criteria provided by the town, and that someone checks to make sure everything is completed.

Mr. Naleid makes a motion to grant the special exception for a gravel driveway, with the condition that the NHDES permit is approved and received within 90 days.

Ms. Hansen asks if there is any way the driveway could be acceptable if the property were to be commercial. Ms. Smith states that the applicant is not being specific for the type of lot; however, if the driveway is anything but gravel it would need to be approved by the board if it is within the 20'. She adds that perhaps it could function with a gravel driveway. She notes that if the lot is developed and non-residential, then a site plan approval would be needed.

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Mr. Naleid asks what size the proposed culvert is and Mr. Frankiewicz replies that it is 15 inches. Mr. Naleid states that this is a small culvert in a 12 ft. wide driveway. He states that if the lot was ever to be used for commercial purposes, it would not be conducive for larger equipment. He adds that if the driveway were to be expanded and increase the size of the culvert in order to support the increase in size of the equipment, they would need to start the process again, and reapply to the state for a new wetlands crossing.

Mr. Quinn asks what the intent of the lot is. Ms. Smith states that a special exception is for the purpose of creating the lot. She states that the ZBA does not have any jurisdiction relative to the purpose of the lot based on the application.

Discussion ensues regarding an applicable time frame for the conditional approval.

Mr. Lavigne seconds the motion and adds the condition that the applicant has the right to come back with one additional 90 day extension.

Roll Call Vote:

Mr. Farr - in favor

Mr. Pollock – in favor

Mr. Lavigne – in favor

Mr. Naleid – in favor

Mr. Pender – in favor

Motion passes unanimously; 5/0.

Mr. Lavigne makes a motion, second by Mr. Pollock, to adjourn. Motion passes unanimously at 8:15 p.m.

Respectfully submitted

Lisa Fellows-Weaver
Board Secretary