

**Town of Northwood
Zoning Board of Adjustment Meeting
August 22, 2016**

1 Chairman Pender calls the meeting to order at 6:30 p.m.

2
3 **Present: Tom Lavigne, Matt Fowler, Vice Chairman Curtis Naleid, Doug**
4 **Pollock, Chairman Roy Pender, Bruce Farr, Board Administrator Linda**
5 **Smith, Land Use Secretary Susan Jastremski-Pastor, and Amy Manzelli,**
6 **Town Attorney.**

7 **Voting Designation: Tom Lavigne, Matt Fowler, Vice Chairman Curtis**
8 **Naleid, Doug Pollock, Bruce Farr and Chairman Roy Pender**

9 **MINUTES:**

10 ***July 25, 2016***

11
12 **Mr. Pollack makes a motion to accept the minutes as written. Mr. Fowler**
13 **seconds. Vote 6/0**

14
15
16 **Case # 16-12: Geometres Blue Hills LLC applicant, Alice Ossoff Revocable**
17 **Trust owners, Bennett's Bridge Road, Map 105 Lot 56.**

18 A special exception to Art. VII C (3) to expand an existing house upward 1 floor
19 in its original footprint, which does not meet the required building setback.

20 A variance to IV.A. Table IV-1/IV.B.(4) to allow a septic system within the
21 building setback.

22
23 **Case # 16-13: Geometres Blue Hills LLC applicant, Robert E. Alexander &**
24 **Kathryn Strauch 1999 Trusts owners, 398 Bow Lake Road, Map 105, Lot**
25 **48.**

26 A special exception to Art. VII C (3) to develop a dimensionally non-conforming
27 lot created prior to Dec. 31, 2005, containing less than 80,000 sf. to construct
28 a 5 bedroom single family residence.

29 A variance to IV.A. Table IV-1/Art. IV Section B (1)(c) for road frontage; lot has
30 129.85 feet of frontage when 150' is required.

31
32
33 Chairman Pender states that due to an error, these two cases need to be
34 continued until September 12. There are no abutters present.

35 ***Mr. Fowler makes a motion to continue Case 16-12 and Case 16-13 until***
36 ***September 12, at 6:30. Vice Chairman Naleid seconds. Vote 6/0***

37 **Case #16-07: Larry & Denise Cleasby, 303 Old Pittsfield Road, Map 205,**
38 **Lot 1.**

39 A variance to Art. IV Section B (1)(b) (3) for upgrading Class VI road; applicant
40 requests upgrading to NH DOT Rural Road Standards in order to construct a

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1 single family residence and barn; the ordinance requires that the road is
2 proposed to be improved to current town standards, as found in the
3 subdivision regulations, and for which adequate financial security has been
4 posted with the town to ensure completion of the improvements.
5
6

7 **Mr. Cleasby and Ginger Dole are present.**
8

9 *Chairman Pender recuses himself.*
10

11 **Voting designation for case #16-07: Tom Lavigne, Bruce Farr, Matt
12 Fowler, Doug Pollock, and Vice Chairman Curtis Naleid.**
13

14 Vice Chairman Naleid states that the board needs to consider if there is a
15 material change of circumstance from an application that was previously
16 denied that would allow the board to hear the case again. A material change
17 would be considered a change of use or a change in the law. The board has
18 received correspondence from Mr. Britian, attorney for the Clarks, as well as
19 correspondence from Mrs. Dole, which they have taken into consideration. Vice
20 Chairman Naleid asks Mr. Cleasby if he was aware of the threshold that needed
21 to be met here, and states that the board will give one additional opportunity
22 for him to comment on whether or not there has been a material change in
23 circumstances. Mr. Naleid states that this is not a discussion on the condition
24 of road, or the maintenance of the road, just a chance for comment on whether
25 there has been a material change of circumstance in the applications.

26 Mr. Cleasby states that Mrs. Dole is speaking for him. Mrs. Dole states that
27 the board is looking for material difference. The 1st case was simply a request
28 for a variance to 150 foot frontage on a Class VI road. The current request is
29 now for a variance to the subdivision road regulations, by bringing the road to
30 rural road standards.

31 Vice Chairman Naleid states they are now going to close the discussion. This is
32 not a public hearing and the board needs to deliberate and decide if there is a
33 material difference.

34 Mr. Farr references the Brant Development Company case in 2011 that says
35 that a material change or circumstances affecting the merits of the application
36 had to be a legal change or a change in use.

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1 Mr. Farr asks what the use for the original application was. Ms. Smith states
2 that it was for a residence. Mr. Farr states that this application is for
3 residential as well so the use hasn't changed. The town standard hasn't
4 changed either. Chairman Naleid states that is correct. The current law has
5 been in place since 1999.

6 Mr. Fowler states that if he's following correctly, there has been no use change
7 or legal change. There have been no material changes in circumstance affecting
8 this application from the last application. Chairman Naleid states that is
9 correct. He refers to the Brant Development case which established change in
10 use in land or in the law or circumstances affecting its use as the basis to
11 determine if there has been a material difference.

12 **Mr. Fowler makes a motion that there have been no material changes in**
13 **circumstance affecting the merits of the application in either usage or**
14 **by any legal standpoint in laws changing. Mr. Lavigne seconds. Vote 6/0.**
15 The board will not be proceeding to hear the application.

16 *Chairman Pender returns to the table.*

17 *Vice Chairman Naleid leaves at 7:00*

18 **Voting Designation: Tom Lavigne, Matt Fowler, Doug Pollock, Bruce Farr**
19 **and Chairman Roy Pender**

20 Mr. Farr would like to state for the record that he is glad to be back at the table
21 as he has been unable to attend for some time due to a schedule conflict.

22 **Continued case # 16-08: Troy Osgood and Katherine Howell, 92 Harvey**
23 **Lake Road, Map 122 Lot 125**

24 A variance to Art. IV Section B (4) Construction of an open carport with one
25 end extending into the setback 5 feet.

26
27 The applicant has requested to withdraw to pursue other options for the
28 property based on the requirement to provide a certified plot plan.

29 **Mr. Lavigne makes a motion to accept the applicants request to withdraw**
30 **their application. Mr. Fowler seconds. Vote 5/0.**

31 **NEW CASE:**

32 **Case #16-11: Thirty Two Fiore Road Realty Trust, David A. Boulay,**
33 **Trustee. 32 Fiore Road, Map 116, Lot 34.**

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1 A variance to Art. IV Section B(2)(b) to allow construction of a single family
2 home and detached garage on property of one acre where two acres are
3 required.

4 A variance to Art. IV Section B (1)(b)(2) to allow a single family home and
5 detached garage to be constructed without upgrading the private road (Fiore
6 Road).
7

8 Maria Dolder is an attorney representing the applicants. Mr. and Mrs. Boulay
9 are present.

10 Ms. Dolder states that when they first submitted the application, there was a
11 question about the septic approval for the property. It had to do with the
12 conditions, whether or not the lots could be in separate ownership. The
13 condition has been amended on the approval, and the plan has been amended.
14 She submits the septic approval to the board. She states the concern was that
15 the original septic approval said the two lots had to remain in common
16 ownership. The new approval amends that condition. The new plan has been
17 approved by the town. It's signed and stamped by the town.

18 Mr. Farr asks if there are two separate issues on this application. Chairman
19 Pender states that it's the septic issue and the private road.

20 Chairman Pender states they will start with Art. IV Section B (1)(b)(2) to allow a
21 single family home and detached garage to be constructed without upgrading
22 the private road.
23

24 Ms. Dolder states that it is their position that they meet the five criteria of the
25 variance request in order to be able to construct on the lot. She states that
26 although this is a private road, this road has already been heavily built on. In
27 fact, as you know, this lot currently houses a seasonal camp. So it's not just a
28 vacant lot. This property will not be the first on this road to have a year round
29 house on it and in its current state, given the amount of activity on this road; it
30 clearly can support this use. It's important to note that Fiore Road was
31 depicted on a plan that was recorded on the Rockingham County Registry of
32 Deeds in 2000. It is plan number 28226. That plan was a lot line adjustment
33 plan. It was a plan for a lot line adjustment that a previous owner had done. It
34 was approved and signed by the Northwood Planning Board. The plan clearly
35 showed Fiore Road. Ms. Dolder states that shows that the town anticipated
36 that there would be further development on this lot.
37

38 Chairman Pender asks if there is anything in place to maintain the road.

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1 Linda Boulay comes to the table and states that there is an association and
2 they do pay dues for the upgrading of the road and snowplowing.

3 Chairman Pender asks if there is municipal water system or plans to pave the
4 road in the future. Mrs. Boulay states not that they are aware of.

5 Mr. Lavigne asks how long the applicants have owned the property. Mrs.
6 Boulay states 13 years. She also states they have several neighbors and that all
7 the lots surrounding them are developed.

8 Ms. Smith asks if the houses around them are homes or camps.

9 Martin Tymowitz is present. He lives at 24 Fiore Road. He is an abutter, and
10 the Association president.

11 Chairman Pender asks the five criteria questions.

12 **Variance Criteria**

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

14 Because even though this property is located on a private road, it has
15 already been heavily built upon. So it's not like we are starting from a lot
16 that has not been impacted already. It will not be the first lot on this
17 road that has a year round residence on it. Clearly, given all of that and
18 the amount of activity on that road; the road, in its current state can
19 support this proposed use without the necessity of being upgraded at
20 this time. As I indicated earlier, it was depicted on a lot line adjustment
21 plan that was before the planning board in 2000 that was approved by
22 the planning board at that time without any requirement that the road
23 be upgraded. This relief that we are asking for will not have any impact
24 on public safety, health or the general welfare of the public.

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

26 Among the expressed purposes of the Town of Northwood Zoning
27 Ordinance is to ensure the safe access to each property for the property
28 owner and emergency vehicles. As stated previously, this property is
29 located on a road that has already been heavily built upon and which
30 houses other full time residences. It's important to note that Fiore Road
31 was depicted on a plan that was recorded on the Rockingham County
32 Registry of Deeds in 2000. It is plan number 28226. That plan was a lot
33 line adjustment plan. It was not required that the road be upgraded. It
34 was approved and signed by the Northwood Planning Board. The plan

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1 clearly showed Fiore Road. This shows that the town anticipated that
2 there would be further development on this lot

3 **3. *Granting the variance would do substantial justice***

4 One of the guiding rules in evaluating substantial justice is that any loss
5 to the individual that is not outweighed by a gain to the general public is
6 considered an injustice. Under that standard we clearly meet that. If the
7 town were now to require that they have to upgrade the road that would
8 be a tremendous loss to the applicant. There is no justified gain to the
9 public in making that happen. There is an association for snow plowing
10 and maintenance of the road. Substantial justice is already achieved by
11 granting variances that do not adversely impact on nearby property
12 owners and which allow a property to be used reasonably.
13

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

15 In terms of the road issue itself, all of the other residential uses are
16 established on the road in its current state. None of the previous owners
17 were required to upgrade the road, nor was it a requirement in 2000,
18 when the lot line adjustment was approved by the planning board.
19

20 **5. *Literal enforcement of the provisions of the ordinance would result***
21 ***in an unnecessary hardship.***

22
23 Out of all of the properties in this particular subdivision, this property is
24 one of the largest lots; the majority of the lots that have structures on
25 them are between .14 and .62 acres. This lot itself contains 1 acre. The
26 structure being proposed is not out of the ordinary for this subdivision,
27 meaning it may be one of the largest lots, but it won't be one of the
28 largest houses. Even with the variance request, the applicants will be
29 able to maintain all of the required setbacks.
30

31 Mr. Farr states that he'd like to hear from any abutters. Chairman Pender asks
32 for any abutters or interested party to speak.

33 Bob Strobel asks how does the impact for the subdivision or the regulations for
34 the 1000 feet to a single access point come into play in this?

35 Ms. Smith states that it does not come into play because it's an existing lot.
36 One point she would like to clarify, however, is the discussion relative to the
37 planning board boundary line adjustment that is a recorded plan that has been

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1 mentioned several times. A boundary line adjustment is to adjust lot lines. Our
2 planning board does not look at, or even have the authority to force road
3 upgrades. That is done at the time of a lot development through the zoning
4 ordinance through the very request you have in front of you. That's when the
5 ordinance would require the road to be upgraded. The criteria that the
6 planning board typically looks at, in this case is that the lot was being made
7 more conforming, and they were purchasing land from an abutter, and the lot
8 line was being bumped out to make a larger lot. The planning board would not
9 be looking at the condition of the road. Because at that point it was all camps,
10 it appears that they are gaining more land, but it doesn't say anything about a
11 change in use from what it is. This was a non-conforming use that would be
12 allowed to continue. Now we are looking at a non-conforming use that they are
13 here to get relief from the zoning ordinance because they don't meet the
14 regulations. So it's a different than the idea that just because it is on a
15 boundary line plan means that somehow the planning board signed off on the
16 road, which is not the case. The road is on there, but they don't take the road
17 condition in consideration just to move a boundary line.

18 Ms. Dolder states that when she called in to the town to ask some questions
19 about the road frontage issue, it was indicated to her that if she could find the
20 road on an approved plan, that it would be important to bring it to the board's
21 attention.

22 Ms. Smith states that it was not relative to the zoning board's application, it
23 was relative to the RSA 674.41 which is building on a private road, which
24 specifically stipulates that if the property is on a signed plat by the planning
25 board, they don't have to meet a second prong to this process in order to get
26 the building permit. That aspect is more for purposes of issuance of a building
27 permit on a private road under the state statute

28 Mr. Lavigne asks the applicant if they have owned this property for 13 years as
29 a summer residence, is it their intention to become permanent residents of
30 Northwood? Ms. Boulay replies yes.

31 Mr. Farr compliments Ms. Dolder on presentation.

32 **Mr. Farr makes a motion to approve the variance request, Art. IV Section**
33 **B (1)(b)(2) to allow a single family home and detached garage to be**
34 **constructed without upgrading the private road. Mr. Fowler seconds. Mr.**
35 **Farr states that he feels the applicant has meet all five criteria for the**
36 **granting of the variance in their presentation.**

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1
2 Ms. Smith adds that Mr. Colby Kramer, one of the abutters, came in today to
3 review the application and they would like it on the record that are very
4 comfortable with the application. **Vote 5/0**

5 **A variance to Art. IV Section B(2)(b) to allow construction of a single**
6 **family home and detached garage on property of one acre where two acres**
7 **are required.**

8 Ms. Smith asks if the applicant has received their shoreland permit yet.

9 Ms. Dolder states that they have applied, and they still have not received it yet.
10 She states it normally takes 30 days, and they applied on August 4.

11 Ms. Smith states that if the shore land permit comes back and they wanted to
12 move the septic or make any changes that would be a concern.

13 Chairman Pender states that is a concern. If the shoreland comes back and
14 says that the septic design is not okay with them, they would be back to septic
15 approval again.

16 Chairman Pender states that he would feel more comfortable if they waited
17 until the shoreland permit approval came back. He would like to consider
18 continuing the case until September 12.

19 **Mr. Farr makes a motion to continue the case until September 12. Mr.**
20 **Fowler seconds. Vote 5/0.**

21 **Internal Business**

22 Ms. Smith states that she would like to remind the board to not hit “reply all”
23 when replying to emails. Please reply singly to Ms. Smith.

24 Ms. Smith distributes the budget review for the proposed 2017 budget to the
25 board. Chairman Pender states that the board should continue with level
26 funding.

27 **Mr. Farr makes motion to continue with level funding. Mr. Pollack**
28 **seconds. Vote 5/0**

29 Ms. Smith states that going forward; the staff will include maps and/or
30 directions to properties for the board.

31

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1 ***Mr. Lavigne makes a motion to adjourn at 7:32. Mr. Fowler seconds. Vote***
2 ***5/0***

3
4 **Respectfully submitted,**
5
6 **Susan Jastremski-Austin**
7 **Land Use Secretary**

8
9