

**Town of Northwood
Planning Board Work Session
August 23, 2018**

MINUTES

Chair Strobel called the meeting to order at 6:34 p.m.

PRESENT: Chair Bob Strobel, Vice Chair Lee Baldwin, Betty Smith, Hal Kreider, Selectmen's Representative Beth Boudreau

TOWN STAFF PRESENT: Board Administrator Linda Smith and Land Use Secretary Susan Austin

VOTING DESIGNATION: Vice Chair Lee Baldwin, Betty Smith, Hal Kreider, Selectmen's Representative Beth Boudreau

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Mr. Kreider made a motion to approve the minutes of August 9, 2018. Ms. Baldwin seconded. Motion carried 4/0/1. Mr. McCaffrey abstained.

CASE: 18-12 David Pelletier Construction, Inc. 8 Old Turnpike Road Map 215/Lot 21. Applicant seeks a minor subdivision dividing Lot 215/21 (12.46 Acres) into two lots; one parcel is 10.04 acres and second is 2.42 acres. Property owned by Cameron & Victoria Harbison.

Mr. McCaffrey made a motion to accept the application as complete. Mr. Kreider seconded. Motion carried 5/0.

Chair Strobel read the abutters list.

Cameron and Victoria Harbison, Northwood
Ridge Road Properties, Northwood
JP Structures, Northwood
Mark Lambert Jr., Somersworth
Sandra Johnson, Northwood
Douglass Sweet, Northwood
Anthony Matras, Pittsfield (present)

Scott Frankiewicz was present for the applicant. He stated that this was a two-lot subdivision. The current conditions are that it is one 12.46-acre lot. The applicant would like to create one 2.42-acre lot and one 10.04-acre lot. For the 2.42-acre lot, they plan on using the existing driveway and existing leach field and there will be a new well drilled. The lot will have 680 feet of frontage on Old Turnpike Road. The driveway would come off of Old Turnpike Road. They have received the State subdivision approval, and the lot has been transferred to Dave Pelletier since the application was submitted. The only other permit that would be associated with this would be the driveway permits that would be issued by the road agent. Within the plan set, they show site lines, and there is some grading that would have to happen as you come out of the lot on to Old Turnpike Road.

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Mr. Mikolyski arrived at 6:50 p.m.

Voting Designation: Chair Bob Strobel, Vice Chair Lee Baldwin, Joe McCaffrey, Hal Kreider, Selectmen's Representative Beth Boudreau and Justin Mikolyski.

Waivers Requested:

1. Section 3.01(E) to allow lot 21-1 to contain a strip of land approximately 27.86 feet in width where 100 is required.

Chair Strobel opened the Public Hearing.

Tony Matras stated that he wanted to know what the zoning was for the lot, and if there was any information about what the plan was for the subdivision. Mr. Burdin stated that this is what's known as the general district, because Northwood only has one zoning district. Mr. Burdin stated that it was too premature to say what the applicant would be doing with the lot, and that would be the subject of a future application.

Chair Strobel closed the public hearing.

Mr. McCaffrey made a motion to approve the waiver to Section 3.01(E) to allow lot 21-1 to contain a strip of land approximately 27.86 feet in width where 100 is required, with the condition that a note be added to the plan identifying the requested waiver and the date of approval. Ms. Baldwin seconded. Motion carried 6/0.

Mr. Kreider made a motion to approve the application with the following conditions:

Prior to the signing of plans:

- 1. That the following changes be made to the subdivision plat: a. Add the proposed driveway on lot 21-1 to sheets 3 and 4**
- 2. The applicant will provide copies of all necessary federal, state, and local permits to the town including, but not limited to a subdivision permit from NH DES and a Town of Northwood driveway permit, except as specifically denoted below.**
- 3. Deliver three signed and stamped copies of the plan for signature.**

Prior to the issuance of a building permit:

- 4. Record the plat with the Rockingham County Registry of Deeds within 1 year of this decision.**

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5. Provide a state-approved septic design

Mr. McCaffrey seconded. Motion carried 6/0.

Preliminary Consultation:

David Pelletier Construction, Inc. 8 Old Turnpike Road, Map 215 Lot 21. Applicant wishes to construct a residential multifamily 5-unit building.

Scott Frankiewicz stated that the applicant would like to put a multifamily unit on the lot that was previously discussed. The unit would be located where the house had existed previously. It would be on the lot with 10 acres, with 7.89 acres being put into open space. There will be frontage on Old Turnpike Road. The driveway would be moved to the 50-foot mark if this would go forward. They are proposing one leach field to service the units and each unit would have an individual tank. There would be two wells. He stated that he had provided architectural drawings for the board to look at. The proposal is to shield it from the road with the buffer that exists and to not disturb that buffer. They are proposing two parking spaces per unit with additional parking to the front of the units. They have a preliminary lighting design with two lights at each end of the parking, and then each unit would have door lights. There would be one dumpster at the right of the entrance. There will be one waiver request for the driveway for the width.

REQUEST FOR REHEARING:

CASE: 18-10 Jennifer and Matthew Frye, Route 202 A, Map 231 Lot 43 and 43-2, and Robert Madison Map 231 Lot 43-1. Applicants seek a subdivision amendment to eliminate the driveway easement located on Map 231 Lot 43 and relocate the driveway for Map 231 Lot 43-2 to be from the frontage of said lot.

Mr. Burdin stated that they received a letter stating that one of the abutters, Scott Martin, would like to appeal the planning board decision on Case 18-10, which was an amendment to a prior subdivision that the board approved at its July meeting to change a prior approval for a shared driveway to allow closure of one access point on that property and the addition of a new driveway on a separate property. They are within the 30-day appeal window and Mr. Martin's letter is dated July 16. Staff consulted with the town's attorney regarding the appropriate response to the letter. The attorney stated that the correct interpretation of the letter as written was that it was a request for the planning board to reconsider its decision. Mr. Martin can also within the 30-day appeal period avail himself to the opportunity to appeal the board's decision to superior court. He could also appeal the board's decision to the zoning board on the grounds of similar allegations that he makes in this letter, that the board's decision was based on a faulty understanding of the zoning ordinance. Either of those options is not relevant in terms of what the board needs to determine in terms of a request to reconsider. We received the letter too late to properly notice a public

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hearing, so there will be no additional input from the public regarding this matter. The board will only deliberate on the correspondence that they have received from Mr. Martin asking them to reconsider. The question that the board will be answering tonight is whether or not the board will reconsider their decision. If the mechanism by which they would do that would be to make a motion to reconsider, that motion must include a reason for reconsidering the decision. They cannot state that it is because Mr. Martin asked, they must give a rationale for why the board should reopen the case. If the board decides to reopen the case, at that point we would discuss setting a date for a future public hear where that reconsideration will occur.

Chair Strobel called a 20-minute recess at 7:55 p.m.

The board returned from recess at 8:18 p.m.

Chair Strobel stated that they would now discuss the request for rehearing. Mr. Burdin stated that if there are questions of process, fact or interpretation that are factual, they can ask or bring those up now. The merits of whether or not to reconsider have to wait until someone has made a motion and it's been seconded.

Mr. Kreider asked if they are saying that something is a structure, and then provide a list, i.e.; including but not limited to, and then we specifically list off things, including driveways with a manmade surface, in the immediate next sentence it says fences, stone walls and driveways, does that refer to driveways with manmade surface, or does that just refer to driveways in general now at this point?

Mr. Burdin stated that his interpretation of that section, because it includes the specific mention of manmade surface, has been that driveways that are paved count as structures and that driveways of natural surface which they have interpreted to be dirt or gravel, are not structures. It is not explicitly stated, however. He stated that he included the proposed ballot amendment from 2017 so that he could show that the board did attempt to address that very discrepancy. The solution that the board proposed was to opt in favor of an interpretation that all driveways were structures. That proposal was rejected by voters. The board could have alternatively proposed that the unambiguous interpretation be driveways with a manmade surface.

Mr. McCaffrey stated that this was all under the heading of "structure" and then it defines it, and goes on to say and driveways with a manmade surface. Following that, fences, stone walls and driveways. It's just defined that way. It's not as super precise as it should have been, but it is defined as a structure.

Mr. Kreider pointed out that "not limited to" could also include driveways without a manmade surface.

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Mr. Burdin stated that what they were deciding tonight was not the correct interpretation of this section, but if there was sufficient merit to Mr. Martin's arguments to warrant a reconsideration, at which point the board should conclude about the correct way to interpret this. They can decide that they are all on the same page and agree that they got it right, or they can decide that it could have been interpreted differently and they should take another look at this.

Mr. McCaffrey stated that the definition of the ordinance is one of the two points that Mr. Martin brought up. Mr. McCaffrey stated that Mr. Martin referred specifically to the page that this came from. The board's understanding of it is a moot point. He stated that his observation is that it is defined as a structure. Mr. Martin is pegging part of his argument on the definition. Mr. McCaffrey stated that the night of the decision, they discussed the differences between structures and he remembers speaking with Mr. Martin directly about it. He remembers the board being clear that as long as this driveway did not become a paved surface that they would approve the driveway as proposed. Mr. Martin's argument was that he wanted to see a 20-foot setback, and then his argument was that with a 20-foot setback it would put it over into the wetland a little bit. Then there was a discussion about the "old" wetland versus the currently surveyed wetland. However, as they approved it, the driveway was delineated as missing that wetland based on its ability to get near the property line because it's not a structure.

Mr. Kreider stated that Mr. Martin did not object originally when the driveway for this lot went through the wetlands. Going through the wetland would have required state approvals. If this driveway were to have to move over 20 more feet, it would have to go through this way, it's only a question of whether the applicant would have to go through permits, either way it comes down to permits.

Mr. Burdin stated that he would caution the board about going into where things are located, because if this does go to rehearing, there would have to be a public hearing to have input on all of those items.

Mr. McCaffrey stated that Mr. Martin made an assertion in his letter of August 16 that the board did not have the authority to give the approval for the driveway. Mr. McCaffrey stated that the board does have the authority.

Mr. Burdin stated that Mr. Martin alleged that the Planning Board does not have the authority to override the development ordinance where that setback is spelled out. Mr. Burdin stated that his position that he outlined in his staff report is not that the board should ignore a setback or that the board should waive or vary or in anyway failed to implement the zoning ordinance as it stands. His staff report stated that staff's interpretation was that the application as provided to this board was compliant according to the zoning code. The discussion that the board should have is whether or

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not it was a correct interpretation of the zoning code or whether staff should have made a different determination based upon an alternate interpretation of the zoning code. We have not asserted that the board has the authority to alter the development ordinance through its actions on a subdivision approval.

Mr. Kreider stated that they have had this definition of non-paved or non-man-made driveways not being structures for quite a while. What would any further discussion on the boards part help in terms of resolving it. Mr. Martin can either go to the ZBA or to superior court and have the court rule if they interpreted this correctly or not. He stated that he feels nothing short of the court deciding whether they interpreted it correctly and have been interpreting it correctly for years. I don't think anything else will give a definitive answer to this. He stated that he doesn't think reconsideration will help answer this and would just be a waste of time for the board and for Mr. Martin.

Mr. Burdin stated that the board is not necessarily bound by the precedent of how it has interpreted things in the past if upon further consideration it doesn't feel that it is the correct interpretation.

Mr. Kreider stated that everyone here, and everyone in the past has always interpreted it the same way as evidence even by the fact that they tried to put it on a proposed amendment to specifically change it. He stated that he feels the board has been pretty consistent.

Mr. McCaffery stated that Mr. Martin had written that the ordinance "clearly states" that a driveway is a structure, but it doesn't clearly state that. At best, you could argue that it's a little confusing, but it certainly isn't clear. Again, this was all under the heading of "structure" and then it defines it, and goes on to say and driveways with a manmade surface. Following that, fences, stone walls and driveways. Mr. Martin is making the assertion that the board faulted because they acted against what's "clear" but it isn't clear. Then he goes into the wetland issue, because once you start moving it around, it's now pushed into where the wetland is in play, but as the board approved it, the wetlands are not in play.

Ms. Baldwin stated that they even discussed having a wetlands scientist delineate the wetland, and after consideration they decided that they didn't need to.

Mr. Burdin stated that the board would need to make a motion one way or the other, either to reconsider this or not to.

Mr. McCaffery made a motion not to reconsider CASE: 18-10 Jennifer and Matthew Frye, Route 202 A, Map 231 Lot 43 and 43-2, and Robert Madison Map 231 Lot 43-1. Applicants seek a subdivision amendment to eliminate the driveway easement located on Map 231 Lot 43 and relocate the driveway for Map 231 Lot 43-2 to be from the frontage of said lot. Mr. Kreider seconded. Vote 6/0

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Internal Business

Ms. L. Smith stated that DOT would like to have a meeting with the board chairman and staff to discuss their findings and decisions about the Cooper Hill driveway permit. She stated that the board would need to vote to authorize Chair Strobel to meet with DOT.

Mr. McCaffrey made a motion to authorize Chair Strobel to meet with DOT and staff on September 6. Mr. Mikolyski seconded. Motion carried 5/0/1 Chair Strobel abstained.

Ms. L. Smith distributed the annual Law Lecture dates to the board.

2019 Budget worksheet

The board discussed the upcoming budget year, including the option to switch from MapGeo to Cartographics for online assessing information.

Mr. McCaffery made a motion to bring the bottom line budget to \$40,000. Mr. Kreider seconded. Motion carried 6/0.

Staff Report

Mr. Burdin stated that he would like to focus on zoning amendments at the September workshop. He stated that the new Executive Director of SRPC, Jen Czysz will be at the October 9 Board of Selectmen meeting in order to introduce herself to the town.

Mr. McCaffrey made a motion to adjourn at 9:36 p.m. Mr. Kreider seconded. Motion carried 6/0.

***Respectfully Submitted,
Susan Austin, Land Use Secretary.***