

**Town of Northwood
Zoning Board of Adjustment Meeting
August 21, 2023**

Cases heard at this meeting:

Case 23-05: Sharon & Michael Sirois, 8 Lufkin Dr. Map 223; Lot 4.

Case 23-17: Michael Cowan and Maryann McDermott, Kramas Lane. Map 102; Lot 9.

Case 23-18: Christopher and Suzzanne Kopp, 28 Shore Drive. Map 122; Lot 41.

Case 23-19: Donald & David Hughes, 7 North Lane. Map 108; Lot 43.2.

Chair Sanderson called the meeting to order at 6:30 p.m.

PRESENT: Chair Pam Sanderson, Members Robin Guzofski, Betsy Colburn (participating electronically), and Alternate Maryelen Brown.

Ms. Colburn's reason for not being at the meeting in person is medical.

VOTING DESIGNATION: Chair Pam Sanderson, Robin Guzofski, Betsy Colburn, and Maryelen Brown.

TOWN STAFF PRESENT:

Land Use Specialist Linda Smith, and Land Use Administrative Assistant Lisa Fellows-Weaver.

MINUTES:

July 24, 2023

On a motion made by Ms. Colburn, and seconded by Ms. Guzofski, the Board voted unanimously, by a roll call vote, to approve the minutes of July 24, 2023, as written.

Continued Cases:

Case 23-05: Sharon & Michael Sirois, 8 Lufkin Dr. Map 223; Lot 4. Applicants seek relief to allow for the construction of a new dwelling within the setbacks:

- A Special Exception from Article VI.A(4)(a), structures within 20 ft. of a wetlands buffer/setback.
- A Variance from Article IV.B(4), structures within 10 feet of the setback, where 20 feet is required.

Ms. Weaver read an email dated August 9, 2023, requesting a continuance for the Special Exception to the September 21, 2023 meeting.

Ms. Smith stated that she did contact Mr. Sirois and they intend to have everything updated within 10 days prior to the next meeting, as required.

On motion made by Ms. Brown, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to continue Case 23-05 to September 21, 2023.

Case 23-17: Michael Cowan and Maryann McDermott, Kramas Lane. Map 102; Lot 9. Applicants seek relief to the following to build a single family residence, on a private right of way where the lot size, frontage type and length, structure setbacks, and setbacks within the Wetlands Conservation Overlay District have not been met:

- A variance from Article IV.B.(1)(b), Type of Frontage. This lot is on a private road.
- A variance from Article IV.B.(2), Lot Size.
- A variance from Article IV.B.(4), Setbacks.

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- A variance from Article IV.B.(1)(c), Length of Frontage.
- A special exception Article VI.A.(4), Setbacks, within the Wetlands Conservation Overlay District.

No one was present to represent this application.

On a motion made by Ms. Brown, and seconded by Ms. Guzofski, the Board voted unanimously, by a roll call vote, to continue Case 23-17 to September 21, 2023, as a courtesy since this is the first meeting on the new Thursday nights.

New Cases:

Case 23-18: Christopher and Suzzanne Kopp, 28 Shore Drive. Map 122; Lot 41.

Applicants seek a variance from Article IV.B.(4), Setbacks, to allow the placement of existing generator to be within the 10-foot building setbacks.

Suzzanne Kopp was present along with Mike, a representative from the Generator Connection.

Ms. Kopp explained that she hired the Generator Connection to obtain any permits and install the generator. She stated that her husband is a disabled veteran, and they need a generator, and she also works from home. She noted that the generator has been installed. She explained that she received a notice from the Building Inspector that the generator does not meet the setbacks. She has had a survey completed to determine the property boundaries and setbacks, and generator location.

Ms. Colburn noted that there are no comments from the Fire Chief.

Chair Sanderson asked who installed the generator pad. Mike replied that the Generator Connection set the location, filed for the permit, and installed it once it was approved. Chair Sanderson stated that the permit is for wiring only. Mike stated that it is a 2" cast pad that sits on top of the ground. Ms. Smith stated that the pad is still a structure requiring a permit.

Chair Sanderson asked if the neighboring property is a seasonal residence and she expressed concern with the close proximity of the generator due to discharge of CO₂; it is 6 feet from the neighbor's window. Mike replied that a generator must be placed 5 feet from any window. Additional discussion was held relative to the process of relocating the generator. Mike explained that relocating the generator would involve digging for underground lines and trenching to the main junction. He stated that this is a tough location due to the septic system, steep slope, and the shoreline; this was the only spot available. Ms. Kopp also noted that there was a 300-gallon holding tank near the shoreline that was filled in.

Chair Sanderson noted no abutters were present.

The Building Department comments were reviewed. Ms. Smith noted the State of NH Building Code requires 5 feet from a property line. The generator is 3.7 feet from the property line and will need to be relocated; it does not meet the building codes in the current location. She stated if this is a State of NH code, she is not sure how the ZBA can grant a variance.

Additional discussion ensued relative to the safety of the neighbors and other location options. Chair Sanderson stated that they may not have the additional space they need,

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and the generator may be too close to the house; however, this location may be the only place the generator could be placed. Also mentioned were the characteristics of the lot including the steep slope, the septic up above the generator, shoreline restraints, and existing boulders located on both sides of the house.

Ms. Brown asked for the dimensions from the back of the house to the pad. Chair Sanderson stated that it appears that the generator is 6 feet, 1 inch, from the corner of the house. Mike stated it is about 3 feet wide. Chair Sanderson stated that it is 4.8 feet as opposed to 5 feet.

Ms. Brown suggested relocating the generator by a foot and one inch. Mike stated that moving would require digging up wires and redoing the gas lines as well.

Ms. Smith stated that the generator must meet building codes; it is not in the ZBA's jurisdiction. She suggested asking the Applicant to reconsider the location; it may not meet setback but may be able to be within the building codes. She stated that the Board may not have to hear the case at that point.

Discussion ensued relative to the process of moving forward with the criteria and hearing the case. It was noted that relocating the generator may result in the generator being compliant with the building code; however, there still may be a setback violation. Chair Sanderson stated that there must be a permit for the pad and the generator must be 5 feet from the property line and 5 feet from the house.

On motion made by Ms. Brown, and seconded by Ms. Guzofski, the Board voted unanimously, by a roll call vote, to continue Case 23-18 to September 21, 2023.

Case 23-19: Donald & David Hughes, 7 North Lane. Map 108; Lot 43.2. Applicants seeks the following relief to permit a deck (after the fact), within the 20-foot setback:

- A variance from Article IV.B.(4)(b), Setbacks.
- A variance from Article IV.B.(4)(i), Certified Plot Plan.
- A special exception Article VI.A.(5)(b), Setbacks, within the Wetlands Conservation Overlay District.
- Appeal RSA 674:41 II

Donald and DJ Hughes were present.

Mr. D. Hughes stated that his handicapped son is at the property on the weekends. The property has a lot of rocks that are a safety issues and his son has almost fallen many times. He had built a deck so that he could add railings to it to prevent his son from falling; he did not know he needed any permits.

Ms. Colburn asked if the deck is completed and noted that permits are needed prior to construction. Mr. DJ Hughes replied that it is 90% completed; they are trying to get the permits now to complete it.

Chair Sanderson stated that the Applicant has appeared before this Board previously for setbacks for the installation of a septic system under the road as well as a seasonal conversion to year-round and nothing was permitted.

Mr. D. Hughes stated that he was not aware a permit would be required for the deck. Mr. DJ Hughes added that they were aware they needed a permit for the dock but not for this deck; he apologized.

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Chair Sanderson opened the public portion and asked for abutters comments. No abutters were present, and no comments have been received.

Chair Sanderson read the denial letter from Building Inspector/Code Enforcement Officer Will Dinsmore stating that a plan is needed by a licensed surveyor showing the distances between the deck structure and the water, property lines, and/or wetlands. This is required by the Northwood Development Ordinances, Section IV.B.(4) subsection (i) Certified Plot Plan; a certified plot plan prepared by a licensed land surveyor must be filed with the building department whenever setbacks are proposed to be diminished or when setback determination is in question.

Mr. DJ Hughes stated that they did contact surveyors to discuss a certified plot plan. They were told that since the deck was constructed it would not impact the plan of the deck as it was existing. In addition, they had a septic survey completed and on file. They were advised by the engineer to file for a variance. He added that they are trying to complete this due to safety issues and would like it done on the fast track to get the deck completed. He noted that the wait for a surveyor is months out, which could lead to an accident or injuries.

Chair Sanderson stated that she understands the safety factors. She stated that she visited the property and did not see anything existing preventing anyone from getting to the water. She stated that there are ways to mitigate risks of endangering a person other than adding a deck, perhaps with fencing. She stated that there are no railings installed. She added that you cannot rely on a barrier in the water to stop the water.

Chair Sanderson stated that the Applicants have requested a variance for a certified plot plan. She noted that there is a violation with the State of NH for the shoreline setback.

Ms. Colburn stated that the application is not complete. Ms. Smith stated that it is complete for their request for this variance to not be required to have a certified plot plan because they submitted a variance application for it.

Mr. DJ Hughes stated that they have submitted an application to NHDES for a shoreline permit.

Mr. D. Hughes stated that the deck is installed. The time frame for a certified plot plan is months out and it ranges in cost between \$4,000-\$5,000. He commented that they need the deck to have the railings. Ms. Smith explained that the purpose is to have the certified plot plan as there is no way to measure the location and setbacks of the deck on the property.

Ms. Sanderson explained the application process. She commented that the intention is good; however, permits are needed.

Ms. Smith stated that fencing can be installed, and fencing is allowed within setbacks.

Mr. DJ Hughes read the following for his father.

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

Mr. DJ Hughes stated that granting the variance to waive the state approved survey requirement for the existing deck on the waterfront property, constructed within 20 feet of wetland, would not be contrary to the public interest. The variance is specific to the survey aspect and does not impact the

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deck's appearance, location, or environmental impact on surrounding properties. The deck's construction is already completed, and the variance seeks to rectify the oversight of not obtaining proper permits rather than making substantive changes. Public safety is not compromised, and the variance aligns with practicality, fairness, and community values, recognizing the existing situation without imposing undue burden on the property owner.

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

Mr. DJ Hughes stated the variance request solely pertains to the survey aspect and does not alter the deck's compliance with other zoning regulations or its intended use. The deck's construction is already complete, and it poses minimal impact on public interests or safety. The property owner takes responsibility for the oversight and seeks to bring the deck into compliance with the ordinance, demonstrating a commitment to future adherence. Requiring a survey now would not significantly contribute to the planning process, and the variance efficiently addresses the situation without penalizing the property owner for the honest mistake made during construction.

3. Granting the variance would do substantial justice because:

Mr. DJ Hughes stated that granting the variance would do substantial justice because it allows us to complete the already built deck and provides essential safety measures for my handicap son against the hazardous rocks and steep drop-off near the water. The variance enables us to take proactive steps to cover the dangerous area, creating a secure space where my son can safely access and enjoy the waterfront. By granting this variance, the Board would acknowledge the urgent need to protect the well-being of my son and ensure that he can experience the lakefront environment without undue risks, fostering a more inclusive and caring community.

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

Mr. DJ Hughes stated that the deck's construction with safety measures in place enhances the property's appeal and functionality, making it more attractive to potential buyers or residents. Demonstrating responsible development practices by addressing the oversight without compromising safety reinforces the property's value and future potential. Moreover, the deck promotes inclusivity and accessibility in the neighborhood, appealing to a broader range of potential buyers and contributing to a welcoming community.

Aligning with existing property trends and character, the proposed deck positively impacts property values and reinforces the overall cohesion of the area.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: (USE (A) or (B)).

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

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

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

(ii) The proposed use is a reasonable one because:

-OR-

If the criteria in subparagraph (A) are NOT established, an unnecessary hardship will be deemed to exist, if and only if:

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

Mr. DJ Hughes stated that the property cannot be reasonably used in strict conformance with the ordinance for a state-issued survey, and a variance is, therefore, necessary to enable a reasonable use of it because delaying compliance would exacerbate safety concerns for my handicap son. The deck, already built to protect him from dangerous rocks and a drop-off, requires immediate attention to ensure its safety measures are in place. Waiting for a state-issued survey prolongs potential risks, denying my son access to a secure environment. Granting the variance would expedite the deck's compliance, addressing the safety needs promptly and fostering an inclusive and protective space for my son's well-being.

Ms. Brown asked when they purchased the house. Mr. DJ Hughes replied one and half years ago. They have been trying to keep his brother away from the water area as there are rocks and holes causing potential entrapment and tripping. He has hearing issues which also impose concerns. Mr. D. Hughes added that he has been keeping his son inside most of the summer.

Ms. Guzofski asked if there was a deck previously. Mr. D. Hughes replied that there was a structure there, but he is unable to verify the structure.

With no additional comments from the Applicant, Chair Sanderson closed the public hearing and opened Board deliberations.

Ms. Brown expressed concern with how the Board can proceed without a plot plan.

Chair Sanderson stated that a certified plot plan is necessary for the Building Inspector/Code Enforcement Officer and even for the Board to look at the property setbacks and shoreline; that is vital to the placement of the deck. She noted that she is bothered most that this is not the first time for an after-the-fact permit for this property.

Ms. Colburn agreed. She stated that the Applicant has been here before. She sympathizes with the issue; however, proper paperwork is needed.

Chair Sanderson noted that there is no testimony on one section of the application and cannot be considered. The mitigating need for safety is important and there is a plethora of options available that can be done for safety if an individual needs

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accommodation. She added that having only the septic plan amended by noting the deck is not sufficient.

Ms. Smith stated that the purpose of a certified plot plan is not only for the Building Inspector to enforce a permit, it also affects surrounding property owners, lake front, NHDES, or anyone else; there must be some way for the Town to know where a structure is sitting to be able to issue permits. She recommended that members look at that through the criteria. She noted that this would also affect abutting property owners; although nothing has been provided in writing, it can change, and the members should consider future property owners. She stated that without having any way to have a specific location within the setback that the Board can sign off on creates a problem. She stated (for example) that in reviewing the Finding of Facts – the Spirit of the Ordinance would be that there would be knowledge of where a structure is located.

Chair Sanderson stated that granting the variance would be contrary to the public interest as the Town has mandated ordinances and building codes that are to be upheld. A certified plot plan is a reckoning of what the property is, which includes the size and dimension of the land, the setbacks, and locations of structures on the land that would include the driveway, any water, the well, septic, and well radius. With regards to the Spirit of the Ordinance would not be observed by the variance because what is required by everyone is negated here and without a reason for it to be negated; it is intended that a certified plot plan is to be provided and that is how building is done and planned for. Granting the variance would not do substantial justice as the Board cannot tell where the placement of any structure is on the property or the distance of setbacks and the shoreline; without this information the Board cannot agree there is substantial justice due to the fact that the proper information has not been provided. Substantial justice is when code enforcement and ordinances are applied equally. She stated that she is not clear if granting the variance would or would not diminish surrounding property values as it is not clear where the setbacks are; it could potentially affect future owners because you cannot affirm where the location is right now. She stated that she cannot vote on a setback if she does not know where the setback is; this could negate property values. She stated that this is not the strongest aspect should there be a motion to deny. With unnecessary hardship, this is not a financial hardship and is not a hardship as a certified plot plan is required. With expression of disability for hardship, any disability is a hardship; however, a certified plot plan is not an accommodation or modification towards a disability, and this would not apply to this variance request. No additional information has been provided for Special Conditions criteria. She stated that she does not feel the Board can move forward without a certified plot plan.

On a motion made by Chair Sanderson, and seconded by Ms. Brown, the Board voted unanimously, by a roll call vote, to deny the variance for relief from obtaining a certified plot plan, based on the fact that it is contrary to the public interest because the rules and regulations are extremely clear as noted in Article IV.B.(4)(i), Certified Plot Plan. Denying the variance would not be contrary to the public interest because a certified plot plan is required and must be filed when setbacks are in question. The graphic provided is a septic plan and is not a certified plot plan; it does not have setbacks anywhere on it, which is necessary. Denying the variance is in the Spirit of the Ordinance, as it upholds the information for the Building Inspector to know the property boundaries, as well as

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placement and sizes of structures existing on the property and a denial observes the Spirit of the Ordinance by applying the same standards to all. A denial observes Substantial Justice as a certified plot plan is required as it is required in all building situations in Northwood per the Development Ordinance, last amended 3/28/23.

Mr. DJ Hughs stated that they have applied for a shoreline permit with NDHES.

Ms. Smith noted that they will need to meet with the Conservation Commission.

A discussion was held regarding RSA 674:41. It was noted that this item has been previously approved; however, this is a new building permit. Verification is needed from the Applicant showing the road is adequate for emergency services.

A recess was taken at 8:23 p.m. Session resumed at 8:28 p.m.

Ms. Smith stated that the Building Inspector did cite RSA 674:41 in the denial letter. She stated that there is nothing within the Applicant's comments that addresses the road; the purpose of RSA 674:41 is for access for the site.

Mr. DJ Hughes asked if it would still be required as it was previously granted.

Chair Sanderson suggested they obtain something from the Cove Way Village District that shows the Board that there is a maintenance plan in effect and there is an association.

Mr. DJ Hughes requested to continue to October 19, 2023; any materials must be provided no later than 10 days prior to the next meeting.

On a motion made by Ms. Brown, and seconded by Ms. Guzofski, the Board voted unanimously, by a roll call vote, to continue Case 23-19 to October 19, 2023, and that the applicant may request an additional continuance if they are not able to obtain the necessary information in that time.

OTHER/CORRESPONDENCE

Rules of Procedure

Proposed changes were read.

On a motion made by Ms. Brown, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to accept the revised Rules of Procedure, as read on July 24, 2023, and re-read August 17, 2023.

ADJOURNMENT

Motion to adjourn was made by Ms. Brown, and seconded by Ms. Colburn, and unanimously accepted, by a roll call vote, at 8:51 p.m.

Respectfully submitted,

Lisa Fellows-Weaver



Land Use Administrative Assistant