

**Town of Northwood  
Zoning Board of Adjustment Meeting  
October 24, 2022**

*Case heard at this meeting:*

Continued Case 22-16: Loren O'Neil

**6:30 Call to Order**

**PRESENT:** Vice-Chair Pam Sanderson, Ted Wilkinson, Ginger Dole, and Betsy Colburn. (Participating electronically)

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

**VOTING DESIGNATION:** Vice-Chair Pam Sanderson, Ted Wilkinson, Ginger Dole, and Betsy Colburn.

**TOWN STAFF PRESENT:**

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

**MINUTES: September 26, 2022**

On a motion made by Mr. Wilkinson, and seconded by Ms. Colburn, the Board voted unanimously, by a roll call vote, to approve the minutes of September 26, 2022, as amended, with edits that do not alter the content of the meeting.

**CONTINUED CASE:**

Case 22-16: Loren O'Neil, Upper Camp Road, Map 244, Lot 43. Applicant is proposing a four-bedroom, single family residence on a lot that does not meet the road frontage and lot size requirements and requests the following relief:

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

Vice-Chair Sanderson reminded the Board members that the application is for a variance for road frontage. The Board continued the case to allow the applicant time to provide additional information relative to the road. The applicant has provided amended responses to the criteria as well as supplemental materials, all previously provided to the Board via email. Fire Chief's comments were provided to the applicant.

Loren O'Neil was present representing the application.

Ms. O'Neil stated that she is seeking a variance to allow her to build on her property, Lot 43, Upper Camp Road.

Vice-Chair Sanderson noted that there are no abutters present for this case.

Ms. O'Neil stated that she attempted to speak to residents in the area, several times. She was able to speak with the last residents on the road who indicated that they plow the road as well as their next-door neighbor. Payment is requested and sometime received. She noted that the ratio of seasonal and year-round residents was 20/80; it is more of a 90/10 split now. She added that there will be more full-time residents living on the road, which should mean that they would be more apt to pay for road maintenance. She added that she did mention a formal maintenance agreement; three residents were in favor. Vice-Chair Sanderson stated that any association agreement would be recorded at the Rockingham County Registry of Deeds. Ms. O'Neil stated that she does have a person that would plow the first 100 feet of road.

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A discussion was held regarding road measurements. Ms. O'Neil stated that she did take some measurements on Upper Camp Road. She explained that there are seven different intervals on the road where cars can pass. She referenced the 1982 subdivision plan that noted the right of way is 50 feet. Ms. Smith stated that the subdivision was approved with a 50 foot width; however, the traveled way could be different. Vice-Chair Sanderson asked for clarification of the road measurement locations provided and where they were taken. Ms. O'Neil replied that the measurements were from the road surface, she was not close to any trees. Vice-Chair Sanderson explained she measured through the traveled way with measurements between 17 and 19 feet. She noted that to get the measurements provided by the applicant one would need to be in the shoulder. She measured from the marked red rock, and it is 24 feet to the widest area, which is along the side of the road. She added she does not consider the side as road surface, and she was not clear with the measurements provided. Ms. O'Neil replied, from that point she had 27 feet and she stated that 22 feet is the minimum roadway as noted in the documentation. Vice-Chair Sanderson responded there is a four-foot gravel shoulder, which then brings it to 30 feet at the marked rock.

Mr. Wilkinson thanked the applicant for trying to provide measurements. He stated that he did not agree with the applicant's measurements and commented that, overall, the road is grossly inadequate.

Vice-Chair Sanderson referred to the Town of Northwood Subdivision Regulations Section 3.02 Roads and to Section IV.B. - Dimensional Requirements of the Town's Zoning Ordinance. A copy was provided to Ms. O'Neil. Vice-Chair Sanderson read that the minimum width of a paved travel lane shall be 11 feet, resulting in a minimum two-way road width of 22 feet; 50 feet is shown on the subdivision plan. However, the road is not upgraded to the 11 feet and 22 feet; 17 feet and 19 feet are shown at the side. She mentioned the surveyed pins had been delineated.

Ms. O'Neil stated that the driveway attached to Lot 43 is currently being used by the neighbor. The tractor trailer is actually on her property. She added that the property line is 10 feet further back from the rock.

Ms. Colburn stated that the road does not meet the requirements for a standard road and should be improved.

Vice-Chair Sanderson read the Fire Chief's comments, which were not available at the last meeting. She stated that comments from the highway, fire, and police departments are required and must be from the chief himself or a designee, not other personnel. She noted that the Town's personnel will always respond with a can-do attitude.

Type of Frontage:

*Criteria questions for a variance from Article IV.B(1), Section (b)(2):*

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

Ms. O'Neill stated that the house will be new construction and will be in accordance with the latest building codes. Having a single-family residence at Lot 43 would have miniscule impact to the Upper Camp Road as accessing the lot would only utilize the first 110-150 feet of the road. She stated that she did talk to four of the neighbors who stated that the first 500 feet of the road is flat, and historically, has never had any

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erosion issues. She noted that there are no issues with access to the property. The access is via a dirt road; only 110 feet from the public road, Lucas Pond Road.

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

Ms. O'Neil stated that as the property owner she has deeded rights to utilize Upper Camp Road and Lower Camp Road without exceptions to access the Lucas Pond Road. Utilizing the first 110 feet to access Lot 43 would not have any additional impact to the road or be contrary to the ordinance. The use of the road beyond the 125 feet would only be used to access the beautiful pond and the enjoyment that it brings, which is already a deeded access.

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

Ms. O'Neil stated that granting the variance would be justified as there would be no additional erosion; this is a minimal use as the lot is so close to the main public road (Lucas Pond). This would be an additional year-round single-family residence to take care of the road, not just a seasonal use.

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

Ms. O'Neil stated that the single-family residence would be new construction and meet all existing building codes. It would also increase the value of surrounding properties thereby raising tax revenue for municipality expenses, and being only 110 feet from the main road, the negative impact would be negligible. The 100 feet of Upper Camp Road is dirt, level, and no potholes. There is plenty of visibility when exiting onto Lucas Pond Road. The road is wide enough for two vehicles to pass side by side. She stated that she easily did a three-point turn in front of Lot 43. Across from Lot 43 is a back driveway opening from the neighbor across the street that is over 20 feet wide that could easily be used as a turnaround in an emergency. There is also a turnaround about 300 feet further down Upper Camp Road at the corner. The first 20 feet of Upper Camp Road is paved; therefore, there is only 90 feet of dirt road impacted by a residential vehicle who would access Lot 43.

**5. Literal enforcement of the 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:**

**(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:**

Ms. O'Neil stated that the building lot is at the beginning of Upper Camp Road (access only 10 feet) to the property boundary. Access is limited to residential use. There are at least 38 other non-conforming residences, according to Town regulations, beyond Lot 43 that would/could utilize access to Upper Camp Road as a private road. Not allowing a variance to access Lot 43, which is at the beginning of a private road (only 110 feet) would be an unnecessary hardship to her, as the owner.

**(ii) The proposed use would be a reasonable one because:**

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Ms. O'Neil stated that the distance to the waterfront will not be negatively impacted by the newly constructed single-family residence. No significant additional usage would impact the area of the road that is narrower, which is over 400-500 feet beyond the access to Lot 43. At least one of the abutters, and several others, are looking forward to having a year-round neighbor instead of another seasonal. She added that the abutter did not think that access to the second lot on Upper Camp Road would cause any road issues. She added that she was told by a resident of 25 years that the first 500 feet of the road has never had any washouts.

**With no further comment from the applicant, and noting that there were no abutters present, Vice-Chair Sanderson closed the public comment time and opened up Board deliberations.**

Vice-Chair Sanderson explained that when granting a variance, all five criteria must be met, or the variance fails and, in the motion, be specific with factual information.

Ms. O'Neil asked to speak. Vice-Chair Sanderson granted the request. Ms. O'Neil asked if she would still need to fix the road if she were proposing to use the location where the neighbor has the tractor trailer, as that is within the first 100 feet; the driveway would be within the first 110 feet of the road. Ms. Smith stated that the applicant would still need to have 150 feet of frontage; it would need to go to a part of the property still, which would go beyond the driveway. Ms. Smith stated that the road is established and needs to be upgraded otherwise the requirement of 150 feet of road frontage is not being met. Vice-Chair Sanderson stated that there is an existing driveway. Ms. Smith stated that the town does not issue driveway permits on private roads. Vice-Chair Sanderson stated that there is 150 feet of an area that is being driven on; it is still not a road that meets the standards. Mr. Wilkinson stated that the road fails in every way. Ms. Smith stated that the requirement for zoning is to meet two things for a road: type and length; 150 feet of road frontage on a type of road that meets the regulation or is upgraded.

Ms. Colburn referred to the Fire Chief's comments relative to the need for the road to be upgraded to the property line. She stated that there could be issues with other properties in the future. She stated that there is no association for the two roads, and the road should be brought up to Class 5 or better. She also noted the regulations are what the town has voted on and accepted.

Ms. Dole stated that she did drive into the area and met an oncoming car. The road was wide enough for the two SUV's to pass by each other. She asked if the road is required to be brought up to town standards would the upgraded section need to be accepted by the town and would the town be responsible for maintenance. Vice-Chair Sanderson replied no, as the approval is to improve 150 feet of road frontage in order to be allowed to build. The town is not obligated to maintain it and it remains as a private road.

Ms. Smith stated that the private roads can be owned in fee simple and there are specific state statutes of how roads become town roads; that is not a part of this application. She stated that the applicant will still be required to satisfy the ZBA and meet the criteria for year-round road maintenance. She explained that the road needs to be accessible not only for emergency services, but also to allow personnel safe access to the area and be able to maneuver the apparatus safely. The ZBA should act on the application based on town services being able to do the best they can for the people that live on the road and make sure that emergency vehicles, school buses, etc. have access

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Additional discussion was held regarding the bond process.

Mr. Wilkinson stated the application fails in multiple ways. He stated that the Zoning Ordinances have been adopted, updated, and adopted again within the past few years, specifically the section relative to frontage. The Board is aware of the issues with frontage in the area and these impacts will cause expenditures; however, it does not transfer into a hardship. A hardship is typically tied to something unique; nothing has been noted to be unique about the land or this parcel. Nothing has been explained as to why the property owner should be able to violate the Town's ordinances. The job of the ZBA is to observe what the people voted for and this proposal is directly contrary to the spirit of the ordinance. The road fails; it is a dangerous area, which makes it difficult for emergency vehicles for access and egress. There is no association in effect for any maintenance of the road and neighbors plowing does not constitute road maintenance. There has been no attempt to explain how the road will be improved to town standards. He stated that he would not be voting in favor of the variance.

Ms. Dole asked about the process of denying applications and if there is any recourse for applicants. Ms. Smith explained the appeal process, noting the requirements and purposes for appeals. She stated that the Board is voting on this application, as presented, seeking relief for the regulations. She noted that evidence from abutters or property holders in the area must be presented by them.

Vice-Chair Sanderson stated that she agreed with Mr. Wilkinson's comments relative to the criteria for spirit of the ordinance not being met. She stated that the towns people voted, latest revision in 2020, regarding the condition of roads being brought up to current town standards, as noted in the subdivision regulations, for which adequate financial security is to be posted with the town to ensure completion of the improvements. She stated that it is clear that the road, as drawn on the subdivision plan, has 50 feet; however, the road has not met other variance criteria. She explained that the Spirit of the Ordinance is very clear, and it is, in fact, securing safety from fires and other hazards and access to the road for all people. She does not believe the criteria has been met with specificity to the public safety and safety of the town's personnel.

**Mr. Wilkinson made a motion, seconded by Ms. Colburn, to deny the variance for Type of Frontage, Article IV.B(1), Section (b)(2), for a lot on a private road, based on the testimony and materials provided.** Mr. Wilkinson stated that the proposal clearly violates the spirit of the ordinance. He stated that the road does not meet the spirit of the ordinance and is inadequate for emergency vehicles for access and egress. No plan has been presented by the applicant as to how to change or improve the road conditions.

**Mr. Wilkinson amended the motion, seconded by Ms. Colburn, to deny the variance for Type of Frontage, Article IV.B(1), Section (b)(2), for a lot on a private road, based on the testimony and materials provided to include:** granting the variance would be directly contrary to the public interest due to the fact that the current road does not allow for access of emergency vehicles. He added that there was reference to the distance to the water frontage of Lucas Pond; however, that is not relevant to this application. In addition, he stated with regard to the literal enforcement of the provisions of the ordinance resulting in an unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property is directly where

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the violation occurs. The general public purpose is for safety, safety for the town and personnel, to safely access the lots for emergencies with necessary emergency vehicles; snow plowing is the only reference to any type of maintenance, which is a small portion of maintenance. In addition, there is no plan showing any proposed upgrading of the road.

**The amendment passed unanimously by roll call vote.**

**On a motion made by Mr. Wilkinson, seconded by Ms. Colburn, the Board voted unanimously, by roll call vote, to deny the variance for Type of Frontage, Article IV.B(1), Section (b)(2), for a lot on a private road, based on the testimony and materials provided, and the finding of facts stated by the members during deliberations: contrary to the public interest, violates the spirit of the ordinance and does not meet the standard of unnecessary hardship.**

Vice-Chair Sanderson called for a recess at 7:56 p.m. Session resumed at 8:02 p.m.

**INTERNAL BUSINESS**

*Budget*

Ms. Smith provided a brief overview of the department's proposed budget. It was noted that the budget has already been provided to the Selectboard; no further action was required.

*Fees*

Ms. Smith provided a brief overview of the Zoning Board's application fees. Members agreed that the current fees were adequate, and no changes were proposed.

**ADJOURNMENT**

Motion to adjourn was unanimously accepted, by a roll call vote, at 8:09 p.m.

*Respectfully submitted,*

Lisa Fellows-Weaver



Land Use Assistant