

**Town of Northwood
Zoning Board of Adjustment Meeting
July 25, 2022**

Cases heard at this meeting:

CASE 22-13 Loto

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

PRESENT: Vice Chair Pam Sanderson, Ted Wilkinson, Steven Kasonovich, Ginger Dole (alternate), Robin Guzofski (alternate), 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, Steve Kasonovich, Ted Wilkinson, Ginger Dole, and Betsy Colburn.

TOWN STAFF PRESENT:

Linda Smith, Land Use Specialist and Susan Austin, Land Use Assistant

MINUTES: June 27, 2022

Vice Chair Sanderson made a motion, seconded by Mr. Kasonovich, to approve the minutes as amended. Motion carried 5/0

NEW CASE:

CASE 22-13 Judy and Frank Loto, Map 201 Lot 7, 72 Old Barnstead Road. Applicant is proposing an addition and a deck expansion that does not meet the building setback and is located in the wetlands buffer, and requests the following relief:

- A Special Exception to Article VI.A (4)(a) Structure Setback to Wetlands. (VI(A)(5))
- A variance from Article IV.B.(4) Structure Setback to Boundary

John Newman from New Hampshire Land Consultants, and Judy Loto, the applicant, were present to speak to the application. Mr. Newman stated that this is a narrow lot, and the original intent was to keep the houses far away from each other. The leach field is in between the house and driveway. The wetland that in question is poorly drained, with ferns and hardwoods, and no standing water. They tried to find location where the addition would fit the best.

Mr. Kasonovich read the memo from the Conservation Commission.

The Commission met on July 5, 2022, for a special work session to review the special exception application for the Judy Loto Old Barnstead Road project. John Newman, surveyor, presented the project and the wetlands impacts. The commission members were mainly concerned with impacts to the wetlands area that will be within 13 feet of the proposed addition. Due to the constraints of the house lot and the location of the main house, it was not possible to move the proposed addition away from the wetland area. The wetlands are considered a poorly drained wetlands according to a report by Fraggie Rock wetland scientists. The culvert that crosses Old Barnstead Road into this wetland area has never flowed. If drainage were to occur flow would be in a south easterly direction towards a large wetland area that is considered to be in the Big Woods of Northwood. The house and proposed addition are not located within the Big

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Woods conservation overlay district. The commission voted to issue a memo to the Zoning Board stating that we have no further comments on the application.

Testimony and criteria for a Special Exception to Article VI.A (4)(a) Structure Setback to Wetlands. (VI(A)(5):

Facts regarding the application as they relate to the specific ordinance.

The applicants, Frank and Judy Loto, request a special exception to the zoning ordinance Article VI.A(5)(b) and Article VI.A(4)(b) (wetland setbacks) where 16.62 feet would be the structure distance from the wetland boundary (poor draining soil) which is within the 20-foot setback requirement. The structure itself will be on raised dry land, within current use area and will not affect the wetland boundary, which is on a neighbor's property. The neighbor has indicated approval if the Special Exception is granted. Plans have been created by Matt Fowler of All in Media to create a sympathetic design to our existing property that will have no impact to the landscape, including staying within the existing well, using piers for the deck extension support, and not cutting down trees or any growth that would affect sensitive property slopes, natural water flow, or drainage. We have been considering this addition for more than 20 years, and the location of the existing house so close to the road, the shape and slopes of our property and existing systems (septic, well) and bounding wetlands that we don't wish to disturb, make this proposed location the one with the least impact. In addition, the addition would not be visible to any neighbors or affect their property values adversely.

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

(a) Those impacts to the Wetlands Conservation Overlay District or its setbacks that are essential to the productive use of land not within the Wetlands Conservation Overlay District shall be allowed by Special Exception. Those impacts include, but are not limited to: the construction of roads, driveways, or 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] the applicant shall first meet with the Conservation Commission, and written findings by the Northwood Conservation Commission regarding the proposal, including but not limited to minutes of the meeting at which the proposal was discussed, are submitted with the Special Exception application, are reviewed by the ZBA, and are made part of the record of the case; and

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Mr. Newman: The memo from the Conservation Commission has been given to the Board.

[2] the applicant shall submit sufficient information necessary to demonstrate that the proposed impacts are essential for the productive use of land not within the Wetland Conservation Overlay; and

Mr. Newman: Sufficient information has been provided.

3] 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; and

Mr. Newman: The area of the footprint does not require much dredging or filling, there will be rip rap, a silt fence and there will be no impact on the well.

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

Mr. Newman: there will be provisions to restore the site to its original grade and condition.

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

Mr. Newman: this is not applicable, as no wetland permit is needed.

Mr. Wilkinson made a motion, seconded by Ms. Dole, to go into Board Deliberations. Motion carried by roll call vote 5/0.

Ms. Dole stated that she feels that based on all the information given tonight, the applicant has met all the criteria for the Special Exception.

Ms. Colburn stated that she agrees that the criteria has been met.

Mr. Kasonovich stated that he agrees that the evidence presented shows that the criteria has been met.

Mr. Wilkinson stated that he also agrees that the criteria has been met.

Vice Chair Sanderson made a motion, seconded by Ms. Dole, to grant the Special Exception to Article VI.A (4)(a) Structure Setback to Wetlands. (VI(A)(5) based on the following findings of fact:

The Board found that the applicant has successfully met with Conservation Commission, they have submitted sufficient information to show that the criteria has been met. The lot is unique land situation in that it has steep slopes and a unique well structure. There will be minimal impact to the wetland buffer, and the applicant will

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be completing the project safely using deterrent methods during construction, mitigating any runoff. The applicant has presented the plan to restore the area, and there is no need for a state wetlands permit.

Motion carried by roll call vote 5/0.

- Criteria questions for a variance from Article IV.B.(4) Structure Setback to Boundary.
- 1. Granting the variance would not be contrary to the public interest because:** The proposed addition does not adversely impact surrounding property or change any existing public or private travel/road/right of way patterns. The proposed addition would also improve the character of the neighborhood, and positively impact surrounding property values.
 - 2. The use is not contrary to the spirit of the ordinance because:** The proposed addition does not affect any town business (road maintenance, etc.) nor does it affect the immediate abutter's ability to develop their land if they choose to do so at a later date, especially given the road frontage available and the existing driveway for the affected abutter. Indeed, we have a letter of support from the affected abutter. The proposed addition will not be visible to the other two abutters.
 - 3. Granting the variance would do substantial justice because:** Our property, although 5.5 acres, as illustrated on the on the property survey, with the residence located close to the dirt town road at the front of the property. Due to the road/septic/trees/landscape/natural features, and varying slopes of the property immediately surrounding the existing structure, this is the only location where we can reasonably add on with the least impact without incurring prohibitive costs.
 - 4. The proposed use would not diminish surrounding property values because:** Surrounding properties would not be impacted physically at all. In fact, the proposed addition would actually raise the property values of surrounding abutters due to the improvement of the property.
 - 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:** Our property, although 5.5 acres, as illustrated on the on the property survey, with the residence located close to the dirt town road at the front of the property. Due to the road/septic/trees/landscape/natural features, and varying slopes of the property immediately surrounding the existing structure.
 - (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:** Since 2002, when we purchased this property, we have thoughtfully considered how best to add on a small addition and this is the only location where we can reasonably add on this much needed, long anticipated,

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- and long saved construction with the least impact to our property and that of the abutters without incurring prohibitive costs.
- (ii) **The proposed use would be a reasonable one because:** It does not expand bedrooms or bathrooms. The proposed addition takes advantage of an existing wasted space between house and well, and merely provided a mudroom, desperately needed storage, and a slight expansion of the existing unrenovated kitchen and deck (The proposed addition would take over a portion of the existing deck rendering it too small to be useful.

Vice Chair Sanderson closed public comment and opened board deliberations.

Ms. Colburn stated that she felt that the criteria has been met.

Mr. Wilkinson stated that he felt that the applicant very well satisfied the criteria, and there was no negative impact. He feels it is a noninvasive project.

Ms. Dole stated that the letter from abutter states that they have no issues, and all criteria have been met.

Vice Chair Sanderson stated that the wetland in between the lots is a big deal, the abutter on the other side can't come close either. The slope and actual design of the house and leach field are unique as well. The spirit of the ordinance is fulfilled, the land is special, the shape and the geographic feature make the lot unique.

Vice Chair Sanderson made a motion, seconded by Mr. Wilkinson, to grant a variance from Article IV.B.(4) Structure Setback to Boundary. Motion carried by roll call vote 5/0.

Internal Business

- Ms. Smith explained to the Board how to better explain findings of fact.
- Next meeting is scheduled for August 22, at 6:30 PM

Motion to adjourn was accepted at 8:35 PM

Respectfully submitted,



Susan M. Austin, Land Use assistant