

**Town of Northwood
Zoning Board of Adjustment Meeting
March 28 ,2022**

Cases heard at this meeting:

Case 21-10 David Pelletier Construction

Case 22-2 Robb and Kristine Mooso (applicants) Cheryl Barnes (Owner)

Case 22-5 Graves Family Revocable Trust (Owner) Paula Fletcher (Applicant)

CASE 22-6 The Eaves Family Revocable Trust

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

Vice Chair Sanderson stated that Justin Miller has resigned.

PRESENT: Vice Chair Pam Sanderson, Ted Wilkinson, Steve Kasonovich, and Betsy Colburn.

VOTING DESIGNATION: Vice Chair Pam Sanderson, Ted Wilkinson, Steve Kasonovich, and Betsy Colburn

TOWN STAFF PRESENT:

Susan Austin, Land Use Assistant, Linda Smith, Land Use Specialist, Chris Brown, Highway Foreman.

MINUTES

Mr. Wilkinson made a motion, seconded by Ms. Colburn to approve the minutes of March 7, 2022, as amended. Motion carried by roll call vote 4/0

Mr. Wilkinson made a motion, seconded by Ms. Colburn to approve the minutes of March 26, 2022, as amended. Motion carried by roll call vote 4/0

CONTINUED CASES

It was noted that the Highway Foreman, Chris Brown, was present for this Case.

CASE 21-10 David Pelletier Construction Old Turnpike Road and Ye Olde Canterbury Road, Map 215 Lot 21-1. Applicant is proposing a common driveway with a wetland impact of 520 square feet and requests the following relief:

- A special exception as specified in the zoning ordinance Article VI Section A.(3).(h)

Vice Chair Sanderson informed the applicant that there were only four members present and asked him if he wished to proceed. He stated yes.

Scott Frankiewicz was present for the application. Chair Sanderson stated that they had not yet had testimony from the applicant that showed how each requirement was met for the Special Exception.

Vice Chair Sanderson read from the Zoning Ordinance regarding the status of the application up to this point, based on the previous plan:

The ZBA shall grant a special exception provided the following are met:

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1. *The applicant shall first meet with the Conservation Commission, and written findings by the Conservation Commission regarding the proposal, including but not limited to the 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.* Vice Chair Sanderson noted that they had received an updated memo from the Conservation Commission, as well as the minutes from the March 23 meeting where the updated wetland impact was discussed.
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.* Vice Chair Sanderson stated that the applicant had demonstrated that as well.
3. *Dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setback, even if this requires adjustments in design outside of this overlay district.* Vice Chair Sanderson stated that Mr. Frankiewicz did state that he would mitigate the Japanese Knotweed.
4. *There shall be provisions made to restore the site as nearly as possible to its original grade and condition.* Vice Chair Sanderson stated that there was testimony provided that stated that the applicant would return the area as close to originally possible.
5. *A state wetlands permit shall be obtained when required.* Mr. Frankiewicz stated that the permit was pending.

Mr. Wilkinson stated that one of the requested items at the last meeting was to have a drainage report stamped by a Professional Engineer. Mr. Frankiewicz stated that they submitted that to the Board last month. Mr. Frankiewicz stated that the Highway Foreman also sent in an updated memo.

Vice Chair Sanderson asked if there were any abutters present that wanted to speak. There were none.

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article VI Section A.(3).(h)

Facts regarding the application as they relate to the specific ordinance: Mr. Frankiewicz stated that per the article and Section above, anything of 200 square feet of wetland requires a special exception. The proposed impact for the common driveway is 1,310 square feet. The driveway is proposed to be a common driveway servicing two lots of Old Turnpike Road. We've located the common driveway in a location that least impacts the wetlands and provides the required sightline distance. Tow Sokoloski is the wetland scientist of record and will be preparing the NHDES wetland impact permit. In addition to that, we've located it where it is due to the steep slopes on the upside as well.

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Ms. L. Smith stated that the applicant needs to respond to each of the 5 required items to show that they have been met. Although the Vice Chair read through them and responded, the applicant needs to respond himself.

Mr. Frankiewicz responded with his testimony:

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 Conservation Commission regarding the proposal, including but not limited to the 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.** Mr. Frankiewicz stated that they have met twice with them, each time receiving a memo stating their concerns.
- 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.** Mr. Frankiewicz stated that they have located the driveway where it would have the least impact to the wetlands and steep slopes, and overall combined the driveways into a common driveway to reduce impacts.
- 3. Dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setback, even if this requires adjustments in design outside of this overlay district.** Mr. Frankiewicz stated that they have provided a small detention pond on the lot to reduce the runoff from the lot and appropriate culverts for that lot
- 4. There shall be provisions made to restore the site as nearly as possible to its original grade and condition.** All sites will be loamed and seeded after the construction of the driveways.
- 5. A state wetlands permit shall be obtained when required.** Mr. Frankiewicz stated that it will be provided to the town.

Mr. Wilkinson made a motion, seconded by Ms. Colburn, to approve the Special Exception for Case 21-10 with the following condition:

That the applicant receives their state wetland permit and provide the town with a copy.

Motion carried by roll call vote 4/0.

Case 22-2 Robb and Kristine Mooso (applicants) Cheryl Barnes (Owner), 172 Lynn Grove Road, Map 115 Lot 8. The applicant proposes to create a new lot without road

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frontage that meets the criteria in the zoning ordinance and requests the following relief:

- a variance to IV.B(1) length of frontage and IVB1(b) type of frontage. Road frontage is private road; length is 101.82 where 150' is required.

Vice Chair Sanderson informed the applicants that there were only four members present and asked them if they wished to proceed. The applicants stated that they did.

Robb and Kristine Mooso were present to discuss the application. Mr. Mooso stated that they owned Map 113 Lot 18. The property that they would like to put a garage on is located across the street from their house. Because of the layout on their lot, there is not sufficient room to add a garage. They intend to purchase a two-acre lot from the property across the street and build a garage for the storage of their vehicles through the winter months. They propose to put in a garage on the abutting lot. It is located on a private road, and the Gulf Village District commissioners conditionally approved the use at their December meeting, pending the approval of this variance.

Mr. Wilkinson noted that the Board conducted a site walk of the property on Saturday the 26th, and one of the comments they had was that one of the conditions of approval be that the structure never be used as a residential structure, to which Mr. and Mrs. Mooso agreed to.

Five criteria for granting a variance from Article IV.B (1) length of frontage

- 1. Granting the variance would not be contrary to the public interest because:** The average road frontage of 14 adjacent lots on Lynn Grove Road is 91.58 feet, with a minimum of 49.78 feet and a maximum of 107.34 feet. This request is in line with existing neighborhood road frontages.
- 2. The use is not contrary to the spirit of the ordinance because:** Specific objective of Section I.A. is to lessen congestion in the streets Since this property is directly across the road from our single-family residence and would be used as a garage, it would not increase traffic on this road.
- 3. Granting the variance would do substantial justice because:** Our current property with a residence, well and septic system does not have room to construct a garage. Having garage capacity would keep vehicles off the narrow roadside.
- 4. The proposed use would not diminish surrounding property values because:** A new structure would add value to the land and therefore increasing property values.
- 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:** This

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property is currently accessed from Oakwood Drive where it meets the road frontage minimum. The property line abutting Lynn Grove Road appears as it may have been subdivided previously with only 101.82 feet of road frontage remaining.

Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area: 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: The land is abutted on either side with no additional road frontage available.

Mr. Wilkinson made a motion, seconded by Ms. Colburn, to approve the variance from Article IV.B (1)(b), with the following conditions:

Condition that it is not used as a living space.

After discussion, Mr. Wilkinson withdrew his motion, Ms. Colburn withdrew her second.

Mr. Wilkinson made a motion, seconded by Mr. Kasonovich, to approve the application for a variance from Article IV.B (1)(b) Length of Frontage, with the provision that the proposed garage be for storage only. Motion carried by roll call vote 4/0

Five criteria for granting a variance from Article IV.B (1)(b) type of frontage

- 1. Granting the variance would not be contrary to the public interest because:** Lynn Grove Road is already currently used by approximately two dozen residents, many of them year-round residents. The Gulf Village District is funded through the residents for maintenance of the road.
- 2. The use is not contrary to the spirit of the ordinance because:** This portion of the road is a dead end. There are only three houses beyond this property. Current Gulf Village District maintenance ensures the road conditions are suitable for the residents.
- 3. Granting the variance would do substantial justice because:** Our current property with a residence, well and septic system does not have room to construct a garage. Having garage capacity would keep vehicles off the narrow roadside.
- 4. The proposed use would not diminish surrounding property values because:** A new structure would add value to the land and therefore increasing property values.
- 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:** The “special conditions “of this property

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that distinguish it from other properties in the area are as follows: This property will be accessed by an existing maintained private road that is currently used by many residents.

Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area: 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: This is an existing, maintained road with several residents already using it. The current conditions of the road are adequate for the limited number of people who are using it. An existing structure, the Gulf Village District is already in place to maintain the road with a board that meets regularly to ensure funding and maintenance schedules are up to date.

Mr. Wilkinson made a motion, seconded by Mr. Kasonovich, to approve the application for a variance from Article IV.B (1)(b) type of frontage, with the provision that the proposed garage be for storage only. Motion carried by roll call vote 4/0

Case 22-5 Graves Family Revocable Trust (Owner) Paula Fletcher (Applicant) Winding Hill Road, Map 238 Lot 2. The applicant proposes to build a single-family home and is requesting the following:

- A variance from Article IV. B Section 1(b) (2) Road Frontage. Lot is located on a private road.

Vice Chair Sanderson informed the applicants that there were only four members present and asked them if they wished to proceed. The applicants stated that they did.

Scott Frankiewicz was present, along with Brett Allard, attorney with Shaughnessy Raiche. Mr. Frankiewicz stated that at the last meeting, it was brought up that there was a road maintenance agreement in place for the lots across the street from the applicant's lot. That agreement is active and has been recorded at the registry of deeds. In addition to that, they have submitted a driveway permit that was issued for this lot. They have also received comments from the Highway Foreman, as well as Police and Fire. He stated that Attorney Brett Allard was also present, and he would answer any questions that they may have for him. Mr. Frankiewicz stated that are asking for a variance for the type of road frontage, the lot was approved in 1974 by the Planning Board, unfortunately, it did not include a road agreement. He stated that the owner is willing to become part of that road agreement.

Ms. Smith stated that the road agreement that he is speaking about is among some of the other owners, it is not a road agreement with the Town. It is also specific only to certain lots, not all the properties on the road. Her understanding is that it is enforceable only by those who are part of that association. Because this is a Class VI Road, no road improvements can be done without authority by the Board of Selectmen.

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Attorney Allard stated that the road maintenance agreement came from the other subdivision in the area which was approved around the same time as the two of these lots. Those other properties are part of the road maintenance agreement, it does not include his client's lot. He stated that he feels Ms. Smith is correct in terms of the Town not having an ability to enforce the terms of the agreement because it is a private agreement, maybe if it was a condition of Planning Board approval there would be an enforcement mechanism there. This road maintenance agreement doesn't pertain to this lot that is before them tonight. He stated that he doesn't think this Board could condition its approval on his client joining the road maintenance agreement. One, because it's a private road maintenance agreement and two, even if the Board tried to do that, it would still be subject to the existing owners of the road maintenance agreement agreeing to that. Third, in another 11 years, this is all going to be water under the bridge because it expires after 30 years from the date of recording. His client has expressed a willingness to join this road maintenance association. They have a vested interest in spending a lot of money to build on this lot, and they want to make sure they can access it.

Vice Chair Sanderson stated that since 1999 through 2020, the zoning ordinances have become more stringent in terms of building on Class VI roads. "A Class VI or private road proposed to be upgraded to current town standards, as found in the subdivision regulations and for which adequate financial security has been posted with the town to ensure completion of the improvement. The owner must comply with 674:41, which is release of liability." They had the option before about a maintenance agreement, but as of 2020, the voters defined the zoning regulation as "improve to current standards." *In the minutes of last meeting, she stated that she had asked "what was unique about this road that that it does not need to be upgraded, because it certainly sounds like it should be upgraded. Mr. Frankiewicz stated that from what he understands, the road is 20 feet wide, so that meets the town road standard. Ms. Smith stated that the road frontage requires that you meet the standard within the subdivision regulations."* Then Mr. Frankiewicz stated *"that this is an existing subdivision that was approved by the town, so if you look at RSA:41, we just need to fill out the top part because it is a lot of record already. Ms. Smith stated that the zoning ordinance requires that they upgrade the road, and that's what you're here for. Mr. Frankiewicz stated that it is an existing lot of record, on a road that's been used for at least 14 lots."* Vice Chair Sanderson stated that that was where she had questions, because in 2007, it was agreed that it was the last time a variance was granted for Winding Hill Road.

Ms. Smith stated that it was the last time that a lot was developed for a single-family residence on the Class VI portion of Winding Hill Road. To be clear, it's an undeveloped lot that has no residential unit on it now.

From the April 2007 minutes: *"Ms. Smith refers to RSA 674:41 and explains this is a state law in that a building permit cannot be issued for a lot on a class VI road unless it is on a plan that is approved by the planning board. She states that this lot is on a signed plan."* Vice Chair Sanderson stated that that's what she isn't understanding.

Ms. Smith stated that they are exempt from the state statute, relative to the issuance of a building permit. Because it is a lot that is on a preapproved plan, recorded at the

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registry and signed by the Planning Board, they are exempt from RSA 674:41. It does not exempt them from the Town zoning ordinance. Vice Chair Sanderson stated that she understood, and the ordinance clearly states that the road must be upgraded.

Attorney Allard stated that he would like to clarify this in terms of the applicant's position. In terms of what they are asking for, he stated that he agrees that they are exempt from 674:41 that has to do with building on Class V streets. He stated that they are asking for a variance as sort of an abundance of caution. He feels there is a reasonable reading of the ordinance that no variance is required at all. For purposes of the record, this abundance of caution variance application the submitted without prejudice to the argument that they may not need one at all. This could be something that the Board could ask Town Counsel.

Ms. Smith stated that they have applied for relief, and now after this Board has reviewed the information, they are presenting the possibility that there was an error on the part of the building inspector who created the denial. She would suggest that it may be best to end here, ask the applicant's attorney to provide a statement of where they are at, as far as, are they asking for relief or are they going to appeal the decision of the building inspector or what are they asking this Board to look at. The Board could then have the Town's attorney review Attorney Allard's position on it for the applicant, then they can go forward. This is all new information that the applicant's attorney is giving them.

Attorney Allard stated that he wasn't at the last meeting, so he just wanted to let the Board know where they were procedurally, which is that they have submitted the variance application. It could be worth having a conversation with the Town attorney about what the proper reading of this ordinance is. If they look at the zoning ordinance and the section that requires frontage "for all lots for building development shall front on a Class V or better or if it's a Class VI, you must improve it" that says all lots for building development. A reasonable reading of it would say that it is for creating a new lot that doesn't have frontage on a Class V Road. That is different from a lot that has existed since 1973 and is part of a vested subdivision. He thinks there is an argument that maybe no variance is required at all, and a building permit can be pulled as a matter of right, and he thinks its something that is worth running by Town counsel.

Mr. Wilkinson made a motion, seconded by Mr. Kasonovich, to continue Case 22-5 until April 25, with all new information to be submitted no later than April 14 by close of business. Motion carried by roll call vote 4/0

NEW CASE:

CASE 22-6 The Eaves Family Revocable Trust, 37 Fiore Road, Map 116 Lot 46.

Applicant seeks to replace the existing septic system and is requesting the following relief:

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- A variance from Article IV.B. 4(b) Setbacks Structures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section. The applicant is proposing to put a septic system 5.5 feet from the side property line, where 20 feet is required.

Vice Chair Sanderson informed the applicants that there were only four members present and asked them if they wished to proceed. The applicants stated that they did.

James Eaves, property owner and Peter Stoddard from S&H Land Services were present for the application.

Mr. Stoddard stated that the applicant is proposing to upgrade the septic system that services an existing seasonal camp located on Northwood Lake. The existing sewage holding tank is to be replaced with a state approved septic system that includes a Fujiclean pre-treatment system with a Geomat dispersal field. Holding tanks are discouraged by the state as they can be subject to maintenance issues and abuse. Site restrictions limit the area on this lot where a new septic system can be placed. The proposed septic system has been designed to pretreat the effluent before discharging the treated waste to a dispersal field. This pre-treatment system will serve to protect the quality of the lake and nearby wells.

Vice Chair Sanderson asked if there were any abutters present. There were none present, so she closed the public comment.

Five criteria for granting a variance from Article IV.B (1)(b) type of frontage

- 1. Granting the variance would not be contrary to the public interest because:** The proposed septic system will upgrade the existing septic system to conform to current standards and will be a benefit to the public health.
- 2. The use is not contrary to the spirit of the ordinance because:** Upgrading the existing septic system will improve the sewage treatment on the lot, and therefore promote the health and water quality for the existing lot owners on the lake.
- 3. Granting the variance would do substantial justice because:** Because of the conditions on the lot, specifically, the location of the existing structure and the limited areas to place a septic system, there is no other practical place to locate a new leach field. A new septic system will vastly improve the onsite sewage treatment, thus granting a variance will benefit the public, while denying the variance may cause harm to the public.
- 4. The proposed use would not diminish surrounding property values because:** The proposed septic system will improve sewage treatment on the lot and thus would raise property values rather than diminish property values because insufficient sewage treatment could negatively impact the water quality of the lake.

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- 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:** The placement of the existing house in relation to the property lines and the size of the existing lot, prohibits the placement of a new septic system that conforms with current regulations.

Owing to the special conditions of the property, 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: Because of the conditions on this lot, specifically, the location of the existing house in relation to the lot lines and the lake, there is no practical area to place a new septic system to comply with the required setbacks. By granting this variance, the property owners will be able to upgrade their non-compliant septic system to conform with current regulations for better sewage treatment.

Mr. Kasonovich made a motion, seconded by Mr. Wilkinson, to grant the variance to article IV.B 4 (b) Setbacks, with the following condition:

- **That all state and local permits are obtained.**

Motion carried by roll call vote 4/0

INTERNAL BUSINESS

Vice Chair Sanderson stated that since Justin Miller has resigned his position, that opens a full-time position on the Board. She asked Mr. Kasonovich if he would like to become a full-time member rather than an alternate. He stated that he did. Steve-full position?

Vice Chair Sanderson made a motion, seconded by Mr. Wilkinson to recommend the Mr. Kasonovich become a full-time member of the ZBA top the Select Board. Motion carried by roll call vote 3/0/1; Mr. Kasonovich abstained.

Ginger Dole was present. She stated that she came to the meeting because she was interested in hearing the cases that involved Class VI roads. She also stated that she would be interested in becoming an alternate.

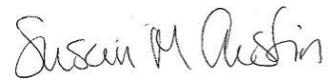
Mr. Wilkinson made a motion, seconded by Vice Chair Sanderson, to recommend that the Select Board appoint Ginger Dole as an alternate on the ZBA. Motion carried by roll call vote 4/0.

ADJOURNMENT

Mr. Wilkinson made a motion, seconded by Ms. Colburn, to adjourn at 8:39 PM. Motion carried by roll call vote 4/0

Respectfully submitted,

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Susan M. Austin, Land Use assistant