

Town of Northwood
Zoning Board of Adjustment Meeting
March 7 ,2022

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

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

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

TOWN STAFF PRESENT:

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

MINUTES

Mr. Wilkinson made a motion, seconded by Ms. Sanderson to approve the minutes of January 24, 2022, as amended. Motion carried by roll call vote 5/0

Mr. Wilkinson made a motion, seconded by Ms. Colburn to approve the minutes of February 28, 2022, as amended. Motion carried by roll call vote 5/0

CONTINUED CASES

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)

Mr. Frankiewicz was present for the applicant. He stated that he had updated plans, and the updated wetland impacts are now 1,310 square feet. Ms. Smith stated that the Conservation Commission reviewed this application with a smaller wetland impact. The Board agreed that the Conservation Commission should look at the updated plans with the new wetland impact area.

Information requested:

- Conservation Commission memo based on the new impact area
- Memo from the Public Works Foreman

Mr. Frankiewicz requested that he receive Mr. Brown's memo 10 days prior to the meeting as well.

Ms. Sanderson made a motion, seconded by Mr. Wilkinson, to continue Case 21-10 until March 28, 2022, with all requested information to be submitted by March 17. Motion carried by roll call vote 5/0

CASE 21-11 SBS New Hampshire 2020, 679 First NH Turnpike, Map 222 Lot 34.

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Applicant wishes to place storage containers within the 20-foot setback and is requesting the following relief:

- A variance from Article IV.B. (4) Setbacks Structures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section. The minimum setback is 20 feet.

Chair Miller stated that the applicant has requested to withdraw their application. He read a letter from Tom Johnson about this request.

Good news... kinda! Their intention to not seek a variance is good news. However, the wording of the letter leaves me with skepticism (based on my years of correspondence with attorneys). I read this as stalling tactics. There are only 2 boxes in violation on the eastern side setback. No timeline given for the 28 on the western side! Contacting those tenants for relocation of contents will be similar to herding cats! The attorney made no mention of the other land use violations or any intention of proceeding to PB. I suggest strongly that The Town directs Jared to issue new violation letter(s) for all the Site Plan violations.

1. 50 white boxes expansion thru out the property without PB approvals.
2. Installation of security fence blocking fire egress and traffic patterns. Suggest Fire Chief issues violation letter for it.
3. Concert slab for shed in setback.
4. Lack of bathroom facility.
5. Lack of application to the Planning Board for amended Site Plan due to expansion based on their site plan submitted with variance application.

Make acceptance of withdrawal of ZBA application contingent on receipt of new PB application for existing violations. Refer to RSA for daily fines still on the clock for noncompliance during PB process. I am away for the weekend but will be back in Town Tuesday and Wednesday if Linda or Jared wants to meet to discuss. Also copy Laura, Town Attorney and have her review draft violation letters since this may indeed go to Court.

Regards
Tom

Chair Miller read a letter from Jared Shaheen, Building Inspector.

Dear Mr. Treadmill,

It has come to the attention of this office that there are fifty-three violations on your property located at 679 First NH Turnpike, recorded with the town as Map 222 Lot 34, including the ones addressed in the original letter sent on August 5, 2021.

After reviewing the minutes of the ZBA hearing and the current site plan, there are fifty storage units total that were added without making an application to the Planning Board for site plan amendment. Along with the additional storage units, work was done to the fence including a new gate without a permit. Another violation involving the fence is that

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it encroaches on to the adjacent property at the western corner nearest the road. In the same corner of the lot is a concrete pad that is within the setback, also encroaching.

The gate is also an issue related to access for first responders. In addition to the ability to gain access, in the event of an emergency, there is a section of fencing closing off the area between two of the buildings created a dead-end situation. It is suggested that you contact the Fire Chief not determine how to resolve these issues.

The request to withdraw the application from the Zoning Board is formally not being accepted at this time. I am requesting that an application be submitted to the Planning Board within thirty days to amend the approved site plan, to include all additional changes, that the permits be obtained if approved, and that any structures within the setbacks be removed. Any future amendments for expansion shall also be applied for, to the Planning Board, prior to any permits being issued.

If you fail to comply, the Town will begin legal proceedings to compel you to do so, seeking injunction relief pursuant to RSA 676:15. In any such litigation, the Town will seek an award of its cost and attorney fees, as well as statutory fines in the amount of \$275 per day from the date of the Town's first letter, as provided by RSA 676:17. Although the selectboard does not enjoy bringing lawsuits against citizens of the Town, should you continue to violate the law, you will leave no other option. The town does not wish to collect fines but prefers that your property be brought into compliance.

Thank you for your attention to this matter and should you wish to bring forward any information that you are not in violation or wish to discuss this matter further, please contact this office.

*Jared Shaheen
Building Inspector*

Ms. Sanderson made a motion, seconded by Mr. Wilkinson, to accept the applicant's request to withdraw their application before the zoning board with the recommendation that they apply for site plan review with the planning board in order to address all zoning violations/site plan regulations; and the ZBA forwards all information (letters, minutes, emails) pertaining to this case to the Planning Board and Code Enforcement Officer.

Motion carried by roll call vote 5/0

Chair Miller called for a 2-minute recess

NEW CASES

Case 22-3

Thirty-Four Bennett Bridge Road Trust, Mark Getty Trustee. 34 Bennett Bridge Road, Map 106 Lot 27&61. The applicant is proposing to replace the existing septic system and is requesting the following relief:

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- A variance from Article IV.A Table IV: Setbacks

Scott Frankiewicz was present for the application. He stated that the applicant is requesting to put a new septic system within 10 feet of the property line, where the ordinance only allows 20 feet. The lot is small, .4 acres, with 80 feet of frontage on Bennett Bridge Road. The house is existing seasonal use, and the applicants have no intention of changing it. It is an 800 square foot house built in the 1950's. The existing septic is from roughly that same time frame, and it is failing. They are asking for a variance in order to replace the existing septic. They have received state approval for the septic design. There is no other way to put a system on this lot without a variance.

Abutters:

Bruce Montville: Mr. Montville stated that he was representing his four siblings. He stated that he loves this variance, and from their point of view, this is an opportunity to better the conditions and an opportunity to upgrade the system. It does meet the 10-foot DES setback. So, for him, he looks at the map and sees the existing is grandfathered in and really doesn't meet that 20 foot as is. This is the only place they could put it, it's an upgrade. We accept this variance request. Better conditions, opportunity to upgrade the system. He stated that his sibling wrote a letter that was not in favor of this, and she has since rescinded that opinion and now she does agree. She wrote her first one where she initially saw that there was a denial, and she just said that she denied it to, without talking to the rest of the siblings.

Chair Miller read Ms. Hart's letter into the record.

*I am in agreement with the denial letter. I am at lot Map 106/ Lot 5
Septic needs to be 20 feet back or further.
I cannot attend the meeting.*

Christine Hart

Five criteria for granting a variance from Article IV.A Table IV-1: Setbacks

Granting the variance would not be contrary to the public interest because: The owners are proposing to replace an existing system placed many years ago and is failing. This will allow the owners to replace the existing system with a modern state approved septic system.

The use is not contrary to the spirit of the ordinance because: The system will be a state approved system and improve the current situation.

Granting the variance would do substantial justice because: It would allow the owners to continue to enjoy the property seasonally which has been in use since 1950 when the cottage was built.

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The proposed use would not diminish surrounding property values because: The use would not change, as it will still be used as a seasonal cottage, but it will be equipped with an NHDES state approved septic system, improving the current situation.

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 property is located on Bennett's Bridge Road between Bow Lake and Bow Lake Bog, an environmentally sensitive area. The property is oddly shaped and narrows to 17.85', creating an area where the leach field is that a 20' setback cannot be met. The system will meet the 10' NHDES state setback requirements.

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: There is an existing septic system on site that did not receive NHDES state approval. The septic system the owners are proposing will state approved and installed by a licensed installer.

The proposed use is a reasonable one: The existing septic system will be replaced by an NHDES state approved system, and the use of the property is not proposed to change.

Mr. Kasonovich made a motion, seconded by Ms. Colburn to approve the variance from Article IV.A Table IV: Setbacks.

Motion carried by roll call vote 5/0

Case 22-4

Harding Metals, INC, 42 Harding Drive Map 234 Lots 76&79. The applicant is proposing to build a 12,000 square foot maintenance building with a small office and parking, relocate the weigh station, and build access roads and drainage facilities and requests the following:

- A special exception for two wetland impacts (for access ways, of 400 square feet and 1,070 square feet) as specified in the Zoning Ordinance, Article VI Section A. (3)(h)

Scott Frankiewicz was present to discuss the application. He stated that the applicant started this process in October, with the first public hearing in December. The Planning Board held a site walk in January, after which he finalized the design based on comments from them. They took the application to the Conservation Commission on February 23, where the application received comments from them.

Chair Miller asked if there were any abutters present. There were none.

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Chair Miller read the memo from the Conservation Commission into the record.

The Commission met on February 23, 2022, for a special work session to review the special exception application for the Harding Metals project. Damon Burt from Fraggle Rock Environmental and John Newman LLS from NH Land Consultants presented the project and the wetlands input. The commission members were mainly concerned with runoff from the site impacting the prime wetlands to the south. The two culvert crossings appear to be well designed. The runoff from the site will be treated in a detention pond and drainage swale before entering the wetlands system. The prime wetlands are located 1,500 feet south of the site. According to the Alteration of Terrain permit application, an operation and maintenance plan designates a Harding Metals employee to be responsible for maintaining these drainage structures.

The expedited minimum impact wetlands application was reviewed on January 20, 2022, and signed off. The commission has no further comments on the application.

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

Per the article and section noted above, anything over 200 square feet of wetland impact requires a special exception. There are two impacts with this project as shown on the enclosed plans. Impact #1 is 400 square feet for the northern proposed access and impact #2 is 1,070 for the southern access. To access Tax Map 238 Lot 78 from Map 238 Lot 79 for the proposed relocation of the maintenance building, fueling station, and weigh station, we are impacting the wetlands in two locations. The wetlands represented on the plans were delineated by Damon Burt of Fraggle Rock Environmental and located by NH Land Consultants. The wetland is connected to a small wetland area in the field of lot 76 and transports the runoff from the Irving gas station southerly to a large wetland complex 1,500 south of the development proposed. The crossings have been evaluated for storm runoff conveyance. Impact #1 will require two 44' long 12" HDPE culverts and Impact #2 will require two 50' long 18" HDPE culverts =. A wetland permit has been prepared and submitted to NHDES for review/approval by Fraggle Rock Environmental. The locations of the impact were chosen to impact the wetland the least amount and avoid the existing features (retaining walls and buildings) on Lot 79. The project requires an NHDES Alteration of Terrain permit, which is in the process of being submitted.

Chair Miller closed the public comment.

Ms. Sanderson made a motion, seconded by Ms. Colburn, to grant the Special Exception for two wetland impacts (for access ways, of 400 square feet and 1,070 square feet) as specified in the Zoning Ordinance, Article VI Section A. (3)(h) with the following condition:

- That all state and local permits are obtained**

Motion carried by roll call vote 5/0.

Case 22-2

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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 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.

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. Would like 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.

Chair Miller opened the public comment.

Ron Chapdelaine: 174 Lynn Grove. He stated that he is an abutter across the street. He stated that the land in question is not a lot. 75 feet of the property abuts his land, and 25 feet abuts the people that are trying to buy this. Most of the land for the frontage is on his property. This land is a hill that goes up, with wetlands at the top. The proposed garage that they are building is almost 50 feet long. They would have to clearcut 50 to 60 feet in front of this to put a garage there. Clearcutting the land on the lake will cause water drainage and lose the natural trees that are there that suck the water up. Usually, you don't get a variance unless you have an existing lot. He stated that he spoke with the applicants and let them know a lot of stipulations that they would like to have done if they have the lot and the variance was granted, and they were not acceptable to that. They want the garage 25 feet from the road, we suggested 250 feet back. If you go 250 feet back. There are power lines there and there are wetlands. He stated that he is very familiar with the property, and what they are trying to do is what he tried to do 15 years ago. It is a private road, and the road is not maintained properly. Years ago there was no one that lived there year round, and he would leave the plow truck there to plow it.

Peter Sierpinsky. He stated that he is a lifelong friend of Ron and Cindy Chapdelaine. He is here to speak on their behalf because they understand very well that Northwood thrives on being neighborly. However, there are procedures that are required for the benefit of all individuals. He thinks they are looking at a case of having the cart before the horse.

Ms. L. Smith read Mr. Chapdelaine's letter into the record.

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As the owner of Lot 113-16 and abutters to the subject, we are requesting that the hearing before the Board on February 28, 2022, be tabled/continued until the applicant presents an application for a variance of an approved lot. We don't believe that the Charter of the Town of Northwood allows the Zoning Board of Adjustment to inadvertently grant a subdivision approval without the benefit of all substantial documentation as required by the subdivision regulations of the Town of Northwood. You have been asked to create a variance on a lot that does not yet exist. Thank you in advance for your attention to this matter. We remain Ronald & Cynthia Chapdelaine.

Ms. Smith stated that she spoke with Mr. Chapdelaine about this concern. This is standard procedure. Any relief from the Zoning Board comes prior to Planning Board action. The Planning Board can't create a lot without frontage that meets the Zoning Ordinance. This would be the first step. Procedurally, they are acting as they should to be in compliance with the regulations. She stated that she did speak earlier with the applicants and expressed a concern that this being a new lot created on that section of private road, may not have a legal right of access. The reason for that is that there was several portions of Lynn Grove Road that at one time were privately owned and may still be privately owned. The majority of camps that are out in that area, were given right of access to them when they were built in the 1940s. It brings into question whether a new lot would have the right to pass over those existing private roads. That is a concern and she doesn't have the answer to it, it is a legal question that will likely come up during the subdivision as well. For tonight, they are looking at granting some relief from the zoning ordinance relative to that frontage. But they cannot guarantee that they can get to that frontage. There are two state RSAs that they will need to be in compliance, through the subdivision process, not through the relief from the Zoning Board, but the board should also be aware of this. One is the 674:41, which the ZBA is familiar with because of granting relief from that. The other statute is 674:53 which says when there is single point of access to a lot and the primary access is through another town the other town has the right to intervene and potentially be part of the subdivision approval. They can choose not to, but the Town of Northwood has to notify the town of Deerfield that they will be applying for the subdivision, and Deerfield can opt to weigh in. Even if the Northwood Planning Board was to approve the subdivision and Deerfield doesn't, then the subdivision doesn't go forward. The hurdle as far as the frontage and accessing the lot is a concern. The last application that she is familiar with that was in that area started out being a 4-lot subdivision and Deerfield at one point had said they would not approve anymore subdivisions for new lots beyond that point where there is that narrow stretch of road going out there because of the potential of adding more people, emergency access for fire and medical. They did negotiate and they did approve two of the four lots. They reduced the number, and Deerfield said that they would not approve any more lots after that. But she can't speak for them, they may approve this, but this is another hurdle that they will have to get through. These are Planning Board issues, but the board should be aware of these because they have to do with the access to this property.

Mr. Mooso stated that he fully agrees that before they build the garage, they have to do

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the proper work and they want to find out is this will be allowed before they spend the money. In this situation, they will not be adding any more traffic on the road, or any more people living on the road. Hopefully when they get to those discussions, it will make this story easier. Ms. Smith stated that to clarify, this board cannot grant access to that property.

Mr. Wilkinson stated that they have heard some testimony about the private road. There seems to be some concern about accommodating emergency access. He feels that he needs a site walk in order to get a better idea of the concerns.

Ms. Smith stated that the building inspector mentioned that they are proposing a bathroom that would require a separate septic system. They are also asking for a heated garage. As to whether or not this is an accessory structure, because as the Building Inspector said, typically you don't add a bathroom to a garage. Sometimes people will if it's a workshop type garage where they work on vehicles, and they might want a sink to wash their hands. With the separate septic system, it then brings into play that by approving the garage, that will somehow set a precedent that they can have a building permit for a residential structure there. Just to clarify as to whether or not it's solely an accessory type of structure, it can't be an accessory to the residence because it's on a separate lot. Mr. Mooso stated that the intent is to store their vehicles and their boat, they wanted a bathroom, so they didn't have to run back and forth across the street. But if that makes this more difficult, they don't have to have it.

The board continued discussion, and agreed to schedule a site walk on March 26, at 10 AM.

Mr. Wilkinson made a motion, seconded by Mr. Kasonovich to continue Case 22-2 until March 28, with a site walk on March 26 at 10 AM. Motion carried by roll call vote 5/0.

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.

Mr. Frankiewicz was present to discuss this case. He stated that the lot has 14.25 acres, with 648 feet frontage on Winding Hill Road. The lot was approved in 1973 by the Planning Board. The applicants would like to build a residence on this lot but need a variance because it is a private road. The road is maintained year-round by one of the current residents. To date, they have done a few test pits to prove the buildability of the lot. They have delineated the wetlands, but they haven't located them yet. To clarify, it is Lot 1 on his plan, but lot two on the tax map.

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Chair Miller opened the public comment.

Abutters:

Kendall Bane: 214 Winding Hill Road. Mr. Bane stated that he takes care of this road, he has for the last 15 years. He stated that it would be nice to have more help. His house was the last variance on this road, he's put a lot of work into this road. He maintains the first half mile. There is a road maintenance agreement, but it doesn't work well. He stated that his taxes are not low, and he wouldn't mind if the town took over maintaining this road. If the board is going to approve a variance, how are they going to help take care of the road, that would be his question.

Arthur Cabrall: 309 Winding Hill Road. Mr. Cabrall stated that would like more help maintaining roads. Over the years he's put tens of thousands of dollars into the road, which improved the road, but in this time, he spoke with Ms. Smith about available lots, and she told him that there were not going to be anymore lots created until the road was upgraded. There is a lot more traffic on this road, and it's becoming dangerous. No one respects the road or slows down. The road is getting worse. He stated he can make it better, but if he can do that, why can't the town pay for it? If they are going to keep adding why doesn't the town take over the maintenance? He thought the building inspector and the road agent would be at this meeting. They understand the issues with this road.

Kim Cabrall: 309 Winding Hill Road Ms. Cabrall stated that -going up the hill in the winter is not fun. Where this driveway is proposed to go through at the very top of the hill, if you're going up the hill in any kind of ice or snow, you cannot stop, you'll go backwards.

Ms. Sanderson asked Mr. Frankiewicz what was so unique about this road 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. 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. Ms. Smith stated that she does not believe that there has been a single lot approved for building since the zoning ordinance changed. It's a different zoning ordinance now. The homes that exist there now were there prior to the change in the zoning ordinance. In 1999 they had a complete rewrite of the zoning ordinance. The last building built was 15 years ago, and they received a variance. Chair Miller stated that all this discussion about the road maintenance is saying that it is not good at all. Mr. Frankiewicz stated that the applicant will do their fair share of what maintenance is required, to include contributing financially.

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Susan Romano: Ms. Romano stated that these are quite difficult ways of approaching these problems. Now, isn't this new law that was voted in 2020, type of frontage, all lots for building development shall front on a Class VI or private road, proposed to be improved to current town standards as found in the subdivision regulations for which adequate financial security has been posted to the town, to ensure the completion of the improvement. This is the law. Ms. Sanderson stated that the private road has been there for a long time. Ms. Smith stated that the requirement to have an upgrade goes back 25 years or so. If here is any language change within that it would show a revision date. Ms. Romano stated that since this has always applied to this road, she doesn't think they need to go through the difficult route of trying to form a village district or an association. This is the newly voted way of fixing Class VI roads that are overly populated. Ms. Smith stated that the zoning ordinance controls this, by the fact that the voters in 2020 said that they do not want anymore development on Class VI roads unless the road is upgraded. The lots were developed in 1973. In 2020, the voters said no more development. 50 years went by. Some people built before this was in place. It's progressed over time, and the ZBA's role at this point is to ask "what about this property sets it apart to grant relief from the zoning ordinance?"

Ms. Colburn stated that she thinks it's time to consider delaying this until the next meeting. This meeting has been going on for four hours now.

Chair Miller asked the board if they need any more information from the applicant.

Ms. Sanderson asked if there were any stakes put out where the driveway is? Mr. Frankiewicz stated that the driveway should be obvious.

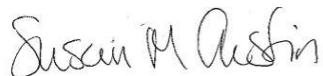
Chair Miller stated that he would like comments from Police, Fire and the Highway Department about the road.

Mr. Wilkinson made a motion, seconded by Ms. Colburn, to continue Case 22-5 until March 28, 2022. Motion carried by roll call vote 5/0

ADJOURNMENT

Mr. Wilkinson made a motion, seconded by Ms. Sanderson to adjourn at 10:15 PM. Motion carried by roll call vote 5/0

Respectfully submitted,



Susan M. Austin, Land Use assistant