

COÖS COUNTY ZONING BOARD OF ADJUSTMENT
North Country Resource Center, Lancaster NH
September 27, 2022

Roll Call:

PJ Cyr-Present

Scott Deblois-Present

Mark Evans-Present

Greg Sipple-Present

Roland "Lefty" Theberge-Present

Also in Attendance: Jennifer Fish, County Administrator; Gregory Dube, Earl Duval, Duval & Associates LLC; Wayne Presby, President of Mt. Washington Railway Company; Ryan Presby, General Manager of Mt. Washington Railway Company; and members of the public and press.

PJ Cyr, Chair called the meeting to order at 6:00 pm.

APPROVAL OF MINUTES OF AUGUST 30, 2022

Mark Evans made a motion to approve the minutes as presented. Lefty Theberge seconded the motion. The secretary Jennifer Fish brought to the Board's attention that an error had been made when typing the minutes under the approval of the October 13, 2021, meeting. The minutes stated that Mark Evans made the motion and Mark Evans seconded the motion. The minutes should read Mark Evans made the motion and Lefty Theberge seconded the motion. Mark Evans withdrew his motion and Mr. Theberge withdrew his second. Mark Evans made a motion to approve the August 30, 2021, minutes with the amendment that Lefty Theberge seconded the motion to approve the previous minutes. Lefty Theberge seconded this motion. There was no further discussion, and the minutes were approved unanimously by voice vote.

CASE 2022-002 Gregory Dube

Chairman Cyr opened the public hearing concerning Case number 22-002. Chairman Cyr explained that application is for a variance concerning Article VI section 6.06 of the Coös County Zoning Ordinances. Mr. Dube proposes to construct a 10'x14.5' woodshed on blocks situated off Pond Outlet Road approximately 22' from the road when 75' is required. All other setbacks will be met. Chairman Cy explained that there are 5 criteria that must be met in order for a motion to be passed. There is a requirement that at least 3 votes must be in the affirmative.

Mr. Dube presented letters to the board from Roger Martineau and Robert Van Vlaanderen. Mr. Dube stated that his lot is non-conforming to today's standards which is causing a hardship to meet the 75' setback. Pond Outlet Road is just an access road for the camps and ends after Mr. Vlaanderen's lot. Mr. Dube referred to the letters from the abutters and stated that they have no issues with the location of the woodshed. Mr. Dube would like to have the woodshed to keep the firewood dry and easily accessible instead of pallets of wood out in the open. Chairman Cy noted the email from Cheryl Bondi, NHDES Wetlands Bureau stating that his project did not meet the criteria for a required Shoreland Permit. Greg Sipple asked if it was possible to move the woodshed closer to the camp and still be within the Shoreland criteria. Mr. Dube replied that it wasn't possible because of the way the lot and the driveway is situated.

Chairman Cy announced that the hearing notice was posted in following locations on September 12, 2022:

County Administration Building, W. Stewartstown

Coös County Nursing Home, Berlin

Coös County Registry of Deeds, Lancaster

Newspapers:

The Colebrook Chronicle 9/16/2022

The News and Sentinel 9/21/2022
The Berlin Daily Sun 9/20/2022
The Coös County Democrat 9/21/2022

Abutters and applicant -Certified mail 9/12/2022

Mr. Dube explained that the proposed area for the woodshed is already clear of trees. If he were to move the woodshed closer to the camp it would require clearing more trees. Scott Deblois commented that if the woodshed was moved closer to the camp, then it wouldn't meet the shoreland setback because it must be 100' from the shoreline. Chairman Cy stated that he had visited the area recently and noted that there are other properties with structures that are within the setbacks required. Chairman Cy asked who the property owner was across the road from Mr. Dube. Mr. Dube stated that the property owner is Bayroot LLC. Mr. Deblois stated the Mr. Dube doesn't own the property, but leases it from Bayroot, LLC.

Chairman Cyr asked if there was anyone present that would like to speak in favor of granting the request. No one from the audience came forward. Chairman Cyr read into the record the 2 letters delivered to the board by the applicant.

1) A letter signed by Robert van Vlaanderen, 59 Pond Outlet Road, dated September 21, 2022:
Dear Paul J. Cyr, Chairman Zoning Board of Adjustment,
The request by Gregory a. Dube for the construction of a 10'x14.5' woodshed, is no issue for me being a (sic) abutting property owner at 59 Pond Outlet Road, on the southerly side. The storage woodshed is not visible entirely, and the setback is currently only visible from the owner's driveway due to the vegetation and trees on Lot 027/1, 53 Pond Outlet Road. I see no reason why a wood storage shed should not be approved as this is an improvement to the existing property regarding firewood storage.

2) A letter signed by Roger Martineau, Pond Outlet Road, dated September 22, 2022:
Dear Mr. Cyr:
I have no issue with Gregory A. Dube's request to build a shed on the same site that Phil Dionne, the previous owner of this property, had in the late 1990s.

Chairman Cyr asked if there was anyone present that would like to speak in opposition of granting the request. No one from the audience came forward. There were no other comments or questions. The public hearing was closed at 6:15pm.

Mark Evans stated that he was comfortable with what had been presented. He realized that it is quite a variance but stated that Pond Outlet Road is barely a road, and it shouldn't be treated the same way we would treat Route 16. Greg Sipple stated that it should be noted that there is also a letter from the lessor, Bayroot LLC and Wagner Forest Management giving consent to construct the woodshed on the property.

Mark Evans made a motion to grant request for a variance concerning Article VI section 6.06 of the Coös County Zoning Ordinances to permit Mr. Gregory A. Dube to construct a 10'x14.5' woodshed on blocks situated off Pond Outlet Road approximately 22' from the road when 75' is required. Scott Deblois seconded the motion. There was no further discussion. The vote was 4-0-1 (Theberge abstention).

COMMUNICATINS AND MISCELLANEOUS

None

OLD BUSINESS

CASE 2022-002 Mt. Washington Railway Company

Chairman Cyr explained that the variance request is concerning Article VI Section 6.06 of the Coös County Zoning Ordinance to permit construction of a 28'x120' train platform where 10' 8" would be within the 25' setback on property located in Thompson & Meserve's Purchase, Map 1605, Lot 11. Chairman Cy explained that the case was previously heard at the August 30, 2022. The full board was

not present for the meeting and a motion was erroneously made to grant the variance. The vote was 2-1, which is not a legal vote. Attorney Christine Fillmore Johnston was consulted on behalf of the board to provide advice. She advised that the board call a meeting as soon as possible to decide on 1 of 2 options:

1. *It could decide that no action was actually taken yet, that the Notice of Decision is void, and continue its original deliberations and voting until some kind of motion actually passes with at least 3 votes (grant or deny). This could all happen at one meeting.*
2. *It could decide that the Notice of Decision was void AND choose to re-notice and rehear the entire case from the beginning again. If that is the decision, it would be exactly like what happens when they grant a motion for rehearing (schedule the new hearing, fully re-notice everyone, and start again). The Board might also reach this conclusion if it is unable to pass some kind of motion under #1 above.*

Chairman Cyr stated that Attorney Fillmore Johnston advised that members of the board that were not present at prior meeting generally may participate so long as they have educated themselves as much as possible by reviewing minutes as well as the application, all evidence presented to the board, etc. If there is a recording of any session(s) they missed, those should be watched/listened to as well. Chairman Cyr stated that he was only able to listen to 15 minutes of the hour plus audio that was sent to him electronically. Although he felt that he could competently review the case with the written minutes and felt comfortable making a decision. Greg Sipple stated that he was also absent from the prior meeting but had listened to the full audio tape and he felt confident that he was up to speed on the case.

A member of the public spoke up and asked if it was possible to ask a question. Chairman Cyr responded the board is a quasi-judicial entity and is not bound by the strict rules of a courtroom. He said that he thought any information would be good information but that the board would deliberate without public comment for the time being but would allow public comments later. He continued comments would be allowed if the comments are about law or procedure. Greg Sipple stated that he would have a problem with allowing any comments from the public. The board can't recognize the public in good faith because the meeting wasn't noticed as a public hearing. Mark Evans stated that he would prefer to proceed with deliberations. Scott Deblois concurred that the board should continue deliberations. Mark Evans made a motion to void the decision that was made in error and continue deliberations. The motion was seconded by Scott Deblois. The motion passed 4-1(Cyr).

Chairman Cyr explained that the error that occurred was since only 3 members were present, the vote needed to be unanimous one way or the other. The motion can't pass or fail on a majority vote. There was further discussion on the rules of procedure for the meeting as adopted by the board in February 2017. Greg Sipple made a motion to rescind the previous motion to continue deliberations and start over and reschedule a public hearing. There was not a second, therefore the motion failed.

It was mentioned that the Coös County Planning Board had approved the 18'x120' platform. Lefty Theberge stated that the additional width of the platform will add to the safety. The board discussed the following findings of fact:

- The only abutting property owner is the White National Forest Service
- The White Mountain National Forest Service was properly notified of the public hearing and a signed certified mail receipt was returned the County Administration Office. No representative of the White Mountain National Forest Service (WMNFS) was present at the public hearing and no other information was submitted by them otherwise
- The applicant's attorney spoke about having two meetings with WMNFS Supervisor Derek Ibarguen and Forest Ranger Brook Brown and made them aware of the plans. Attorney Duval offered that both parties did not object and gave him permission to relay as such to the board.
- Chairman Cyr read the facts from MWRR's variance application to support granting the variance.
- Evidence was presented that emergency vehicles could move through the 14' setback area.

- Evidence was presented that the platform's purpose would be to provide more space for passengers disembarking from the train. The increased width of the platform would increase the safety of passengers, hikers, and skiers.
- The extra 10'8" platform accommodates lean-tos and still provides area for passengers to disembark and congregate.
- Attorney Duval discussed the 99-foot right-of-way and the 25' setback creates limitations due to the Weeks Act.
- The public comments were about the environmental impacts and the viewshed.
- The cornerstone of the public comments was that granting the variance would be contrary to the public interest.
- The original right of way of 99 feet and the setback puts an unfair burden on the railroad for any expansion.

Lefty Theberge made a motion to grant the request for a variance from Article VI Section 6.06 of the Coös County Zoning Ordinance to permit the Mt. Washington Railway Company to construct a 28'x120' train platform where 10' 8" of the platform would be within the 25' setback of the White Mountain National Forest property line with the following conditions, submit updated site plan documents to the Coös County Planning Board before construction commences. Mark Evans seconded the motion. The motion passed 4-1 (Deblois).

DATE AND TIME OF NEXT MEETING

The next meeting date is to be determined.

Mr. Deblois made a motion to adjourn. Mr. Theberge seconded the motion. All voted yes. The meeting was adjourned at 7:32 pm.

Respectfully submitted,
Jennifer Fish

NOTICE OF DECISION - GRANTED

Zoning Board of Adjustment,

City/Town of COOS

Case No: 2022-01

You are hereby notified that the appeal of

MOUNT WASHINGTON RAILWAY COMPANY - WAYNE PRESBY

for a VARIANCE TO CONSTRUCT 28' X 120' PLATFORM

regarding section 6.06 ARTICLE VI of the zoning ordinance
has been GRANTED, subject to the conditions listed below, by the affirmative vote of at least three
members of the Zoning Board of Adjustment.

Conditions:

1. SUBMIT NEW/UPDATED PLANS TO PLANNING BOARD
2. _____
3. _____

Paul D. Ayon
Chairperson, Zoning Board of Adjustment

9/27/22
Date

FINDING OF FACTS

The Coos County, NH Zoning Board of Adjustment held a public hearing on August 30, 2022, and further ZBA discussions on September 27, 2022 at the North Country Resource Center/Granite State Room located at 629 Main Street, Lancaster, New Hampshire concerning a request by Wayne Presby of the Mount Washington Railway Company for a Request for a Variance concerning article VI, section 6.06 of the Coos County Zoning Ordinance.

The applicant proposes to construct a 28'x120' train platform where 10'8" would be in the 25' setback of the property located at 3168 Base Station road, Thompson & Meserve's Purchase, Map 1605, Lot 11.

Summary of the facts of the case discussed:

1. The only abutting property owner is the US Forest Service-USDA, White Mountain Forest.
2. The White Mountain National Forest Service was properly notified of the public hearing and signed certified mail receipt was returned; no representative from the White Mountain National Forest was present at the hearing and no information was submitted by them otherwise.
3. The applicant, through Attorney Earl Duval, had two meetings with White Mountain Forest Supervisor, Derek Ibarguen and White Mountain Forest Ranger, Brooke Brown. Both representatives from the White Mountain Forest Service were made aware of the planned construction, intent of construction, plot plans, narrative and variance criteria. Attorney Duval offered that both parties did not object to the planned construction and gave him permission to relay their position of no objection to the Coos County ZBA.
4. The Mount Washington Railway Company presented the following to support the request for a variance:
 1. The additional platform is an accessory use to the existing station in an area that is only developed by the railroad and surrounded by thousands of acres of very dense forest on both sides of its tracks. Granting the variance would not be contrary to the public interest because it does not alter the essential character of the neighborhood, nor does it threaten the health, safety, and general welfare of the public.
 2. In general, it is understood that setbacks are established to promote the health, safety or general welfare of the public. Setbacks do this by lessening congestion in the streets and prevent landowners from crowding the property of others; allow for the safe placement of utilities; securing safety from fires, panic, and other dangers; and for providing for adequate light and air. If the variance was granted, the spirit of the ordinance would be observed because it would not threaten the health, safety, or general welfare of the public in that the legal purpose of the setback would not be violated. As proposed, there would still be substantial distance (14'4") from the edge of the platform to the property line and all guests visiting Waumbek Station will remain on the platform or on property owned by the Cog.

3. Granting the variance would do substantial justice because the general public would benefit significantly from having a safe platform, the platform as proposed is consistent with the present use of Waumbek Station and the development will create additional property taxes.
4. If the variance were granted, the values of the surrounding properties would not be diminished because the project as proposed is consistent with the present use and it would not alter the existing character of the area.
5. Due to the unique size of the Cog's property the required 25' setback requirement makes it impossible to construct a platform that would safely accommodate Cog passengers at Waumbek Station. The Cog's only outcutter at Waumbek Station is the White Mountain National Forest (Map 1605, Lot 5 consisting of 10,665 acres). The entire property line at Waumbek Station consists of dense forest land. Given the special conditions of the Cog's property, application of the required 25' setback would not advance the purposes of the required setback in any fair and substantial way. Given the uniqueness of the property and the environment, the construction of the proposed platform is reasonable as it will provide a safe place for the Cog's passengers to disembark and enjoy a part of the Mount Washington.
6. Evidence was presented that emergency vehicles could still maneuver through 14' setback area.
7. Evidence was presented the platform's purpose will be to provide more space for passengers disembarking from the train.
8. Evidence was presented that the increased width of the platform would increase the safety of passengers and hikers/skiers using the railroad right of way.
9. According to Weeks Act, Mt Washington can not infringe on White Mtn Forest.
10. Public mostly concerned with view and environment.
11. The extra 10'8" platform accommodates lean-tos and still provides area for passengers to disembark and congregate.
12. The additional square footage could potentially interfere with views.
13. Contrary to public interest
14. The original row of 99' to summit the 25' unfair burden for the future use of property.

NOTICE OF DECISION - GRANTED

Zoning Board of Adjustment,

City/Town of Millsfield

Case No: 2022-02

You are hereby notified that the appeal of

GREGORY A. DUBE

53 POND OUTLET ROAD, MILLSFIELD

for a VARIANCE TO CONSTRUCT A 10' x 14.5' WOODSHED

regarding section 6.06 ARTICLE VI of the zoning ordinance
has been **GRANTED**, subject to the conditions listed below, by the affirmative vote of at least three
members of the Zoning Board of Adjustment.

Conditions:

1. N/A
2. _____
3. _____

Paul D. Cyr

Chairperson, Zoning Board of Adjustment

9/27/22

Date

FINDINGS OF FACTS

Zoning Board of Adjustment,

City/Town of COOS

Hearing held at: 9/27/22 6:00 PM
(date) (time) (location)

concerning a request by GREGORY A. DUBE
(applicant's name)

for _____
(type of appeal)

concerning article V1 section 6.06 of the zoning ordinance.

Applicant proposes to:

CONSTRUCT 10' x 14.5' WOODSHED

on the property located at 53 POND OUTLET ROAD MILLSFIELD
in the _____ zone.

Summary of the facts of the case discussed at the above public hearing:

1. WOODSHED SIMILAR TO OTHER ACCESSORY BUILDINGS ON ADJUTING PROPERTIES
2. WOODSHED WAS PLACED IN SAME AREA AS PREVIOUS WOODSHED
3. ALL ADJUTING PROPERTIES SUBMITTED LETTERS OF APPROVAL
4. APPLICANT SUBMITTED EVIDENCE TO SUPPORT VARIANCE CRITERIA
5. _____
6. _____
7. _____