

Nottingham Planning Board Meeting

DATE: March 8, 2023

Official Minutes

**Call to Order**

**Members Present:** Eduard Viel, Chairman; Ian MacKinnon, Vice Chair; Susan Mooney, Secretary; John Morin, Select Board Ex-Officio Representative; Gary Anderson, SRPC Representative; Charlene Andersen, SRPC Representative; Sherry Sandler, Member; Robert “Buzz” Davies, Alternate.

**Members Absent:** Sandra Jones, Alternate.

**Alternate Seated and Voting:** None.

**Others Present:** Blair Haney, SRPC; Alana Kenney, Land Use Clerk; Sam Demeritt, Nottingham Conservation Commission Chair; Sam Kauh, Engineer; Henry H. Boyd, Jr., Land Surveyor; Linh Aven, Applicant; Brian Fluharty, Applicant; Leah Laporte, Abutter.

**Call to Order**

The meeting was called to order at 7:00PM.

**Roll Call**

Roll call was completed.

**Public Hearings**

***Case # 23-001 SIT Dandelion Forest Farm: Application from Linh Aven requesting a Conventional Site Plan Review so that the business, Dandelion Forest Farm, is able to not only farm the land, but also host 8 – 12 events (brunches, dinners, and/or educational workshops) per year. The property is located at 311 Stage Road in Nottingham, NH and is identified as Tax Map # 18, Lot # 19.***

Linh Aven came forward and introduced herself and her husband, Brian Fluharty, as residents of 311 Stage Road. Ms. Aven advised that they have owned and operated Dandelion Forest Farm for the past two years. Their business focuses on growing local food and crops that are well-suited to the soil. They employ regenerative growing practices, including numerous perennial crops. They grow annual vegetables to sell at their on-site farm stand. This year they will join a small, ten-member Community Supported Agriculture (CSA) vegetable share. They also are planning educational farm events such as gardening workshops and farm dinners. Last season, Dandelion Forest Farm hosted four farm dinners on-site and expect to hold 8-12 such events this season and in the future. Ms. Aven stated that she is a trained chef who worked as Executive Chef of a 78-unit restaurant chain in the Northeast. Before that, she was a pastry chef in Boston. Their chef partner for the Farm dinners is an experienced restaurant owner and chef. They are

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41 proud to not only support local food and seasonal produce but also area farms in the area. And  
42 obtaining approval for future events will add to Nottingham's agricultural history.

43  
44 Mr. Viel asked Mr. Haney for his review of this case. Mr. Haney noted that the use of the land  
45 falls under agritourism, which is part of the definition of agriculture, and that there is not much  
46 in the way of local town regulations. He did offer considerations for the Board.

- 47 • The applicants are not presenting, nor did the Board ask for, a traditional site plan due to  
48 the unique nature of the case.
- 49 • There are aspects of the application that are "incomplete" due to the unique nature of the  
50 case.

51  
52 Mr. Viel noted that agriculture is in the *Nottingham Master Plan*. He noted that the Town defines  
53 agriculture but does not define agritourism. Normally, the Board defers to the state RSA for their  
54 definition of agritourism. Mr. Viel asked the Board how they would like to handle this case and  
55 what authority, if any, they would have to hear this case.

56  
57 ***Mr. Anderson made the motion to accept Case # 23-001 SIT as complete. The motion was***  
58 ***seconded by Mr. MacKinnon. The motion was unanimously approved by a vote of 7-0-0.***

59  
60 Mr. Viel asked where the conservation easement is located on the property. Mr. Fluharty noted  
61 that the easement deed defines a two-acre exclusion, so it covers all but two acres of the property  
62 (the two acres that the house sits on). The exclusion zone runs to the first seat at the end of the  
63 patron table, the rest is under conserved land. Mr. Viel asked if a potential future structure would  
64 be built in the easement area. Mr. Fluharty reported that it would be on the conserved portion of  
65 the land. He further advised that, under the Southeast Land Trust (SELT) agreement, they are  
66 allowed to develop on the land as long as it maintains agriculture, agritourism, or agroforestry.  
67 The agritourism definition that SELT provides includes meals as well as workshops. The one  
68 stipulation is that they cannot create more than 2% of the land being non-permeable. The  
69 pavilion that they are considering would be significantly less than 2% of the property's acreage.  
70 Mr. Viel asked if this would be in the area of the tents shown on the provided drawing; Mr.  
71 Fluharty replied that it would.

72  
73 Mr. Morin asked to view the SELT documents. Ms. Aven passed it around the table. Mr. Morin  
74 asked where the paperwork says that the applicants can host dinners and workshops. Ms.  
75 Andersen stated that agritourism is within the RSA regarding agriculture. Ms. Aven advised that

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76 it is in Section 1-E. Mr. Viel noted that the Building Inspector would be the one to issue the  
77 permit for the structure, following SELT's approval.

78  
79 Mr. Viel reported that, in his research, he has found that the Board does have some purview in  
80 that they can discuss parking and access as well as provide feedback on proposed structures; at  
81 this scale, the applicants don't need any sort of variance for commercial use.

82  
83 Mr. MacKinnon recommended that the applicants take a look at the loading on the septic system.  
84 He further recommended that the applicants reach out to the NH Department of Transportation  
85 (NHDOT), as the Town does not have jurisdiction for Stage Road (NH Route 152) or the  
86 driveways. He stated that he initially had concerns but now feels that the plans could work in a  
87 residential site. Mr. Fluharty noted that at their dinners last season, the guests would typically  
88 arrive over the course of an hour and leave after dessert, easing up on the traffic on the road.

89  
90 Mr. Viel inquired as to how the applicants would handle restrooms. Mr. Fluharty advised that the  
91 cost of port-a-potty rentals is high; what they did last season was section off a front room in their  
92 home in which a guest could come in and use the facilities.

93  
94 Mr. Viel stated that if this were a commercial case, the Board would look at proximity to  
95 neighbors, buffers in place, hours of operation, maximum number of people, impact on traffic,  
96 and impact on septic. He recommended that the applicants consider implementing a written limit  
97 on how many people attend their events.

98  
99 Ms. Mooney asked if the applicants had more than forty (40) people at their events last year and  
100 if it impacted the septic system. Ms. Aven replied that the largest number of attendees was thirty-  
101 seven (37) and that it did not impact the septic system. She stated that guests would use the  
102 restroom over the course of a few hours, and there was not a rush of people using it all at once.

103  
104 Discussion followed whether or not the applicants need to have a site plan review or if their  
105 operation is still small enough that they can continue to have their events under the Town's event  
106 permit. Ms. Andersen stated that, per RSA 674.32b, the applicants would be allowed to expand  
107 as long as the expansion complies with state laws, regulations, and rules. She asked if what the  
108 applicants are proposing is significant enough to warrant a site plan review. Mr. MacKinnon  
109 suggested that the Board could implement a condition of approval that limits the number of  
110 events to twelve per calendar year, and that if the applicants were to hold any more than that,  
111 they would have to appear before the Board again. He noted that, operationally, Dandelion  
112 Forest Farm acts as a commercial business but that there is more state governance over it,  
113 making it a gray area for the Board.

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Mr. Haney referenced the *Local Regulation of Agriculture Toolkit*, which states that there are things that the Town can regulate, and perhaps should regulate. The question the Board faces is, to what extent should the Town regulate?

Ms. Andersen inquired as to whether or not the applicants would hold more than twelve (12) events per year, should their operation continue to grow. Ms. Aven stated that their primary goal is farming, and that holding the events (as much as they enjoy them) takes away from that primary goal. She expressed that they would consider holding more events if the business is doing really well but that “it’s already a lot”.

Mr. Viel suggested that the Board create some kind of baseline that, if exceeded, causes the applicant to need to return to the Board. This would be more formal and something that the Town can use to measure if and when other similar cases come up. It would give the applicants some breathing room because they would have something that has been approved by the Town, making it a win on both the side of the applicants and side of the Town. Mr. Viel suggested raising the threshold of events to twenty (20), setting the hours (from 8:00AM to 10:00PM), and set the maximum number of attendees to 100. He reiterated that the NHDOT would likely need to have a say due to their jurisdiction over Stage Road.

Mr. Morin noted that the Board has deliberated more on smaller projects and suggested that it do its due diligence and really consider the elements of this application before approving it.

Mr. Viel stated that the Board’s hands are tied because the state regulates agriculture and agritourism, so they cannot be as strict with this case as they would be with commercial cases. He advised that, in certain areas, the state sets the rules. Towns can make them more restrictive if they so choose. He further stated that there is nothing in Nottingham’s *Zoning Ordinance Regulations* that specifically restricts agritourism or defines it differently than how the state does. He expressed concern regarding where the Board’s purview comes in in this situation. In other communities, such cases have expanded to a point where towns are looking at how the lands are used. He noted that this case does not seem of that scope or scale. He further noted that the Board has had site plans come in with less information, and that the Board has the authority to weigh every case by its own merits. He recommended that the applicants add some measurements to the application plan (to the best of their ability) to help to give an idea of where things are located on the property.

Mr. MacKinnon reviewed some of the potential criteria that the Board has brought up. One is a limit on number of events held in a calendar year. The Board has recommended capping at fifteen to twenty (15-20) events. Another criterium are the business hours, which the Board is recommending 8:00AM to 10:00PM. It was noted that Nottingham does not have a noise ordinance.

Mr. Davies asked if these events were going to be lit up. Mr. Fluharty replied that during their events last season, they had string globe lights under the tent and small down lights to light the path to the tent. Mr. MacKinnon recommended that, with any new lighting, the applicants refer to the Town Lighting Ordinance in the *Zoning Ordinance*.

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Mr. Viel inquired as to whether or not the applicants have had any input from the Police or Fire Departments in regard to this site plan review. Ms. Aven reported that they had not.

Mr. MacKinnon reiterated that the applicants reach out to the NHDOT, District 6, to determine whether or not they need any particular permits.

***Mr. MacKinnon made the motion to approve Case # 23-001 SIT, Dandelion Forest Farm at 311 Stage Road, for the agritourism business as described in the application with the following conditions: a maximum of twenty (20) events per calendar year, events ending by 10:00PM, any new lighting shall comply with the Town's Lighting Ordinance, and the applicant shall contact and coordinate with NHDOT for their access onto the state highway. If any of these conditions are exceeded, the applicants would need to come back to the Board with a new application. The motion was seconded by Ms. Mooney.***

Discussion was held by the Board regarding whether or not the motion should be amended to limit the number of attendees. It was noted that the Town Event Permit allows the applicant to have up to 99 people in attendance at a particular event. It was decided that the maximum number of attendees would not be a condition of approval.

***The motion was approved by a vote of 6-0-1.***

***Case # 23-002 SUB Concrete Products: Application from Concrete Products of Londonderry requesting Planning Board Approval of a 3-Lot Residential Subdivision utilizing the existing frontage on Smoke St. The property is located at 100 Smoke Street in Nottingham, NH and is identified as Tax Map # 11, Lot # 3.***

Henry Boyd of Millennium Engineering came forward and introduced himself on behalf of the applicant. He stated that he had been before the Board about six months ago but has returned with a new and improved plan. The previous plan outlined four potential lots; this plan outlines three potential lots, which is what the Board preferred with the first application. The property is about 35.5 acres with an abundant amount of road frontage. This application outlines a 75-foot offset from the flood zone. There are two (2) wetlands that nearly bisect the parcel but they do not connect to each other. A hydrogeological report has been conducted and was provided for the Board.

Mr. Boyd showed the Board that the first sheet will be recorded at the Registry of Deeds. The second sheet is an existing conditions perimeter of the entire parcel. The third sheet illustrates the existing conditions and shows the topography and planned lot development. The fourth sheet shows the test pit areas, the designated septic areas, the 30,000 square foot building envelope for each lot, the wellhead areas, and suggested driveways with proposed grading. Mr. Boyd reiterated that this three (3)-lot subdivision is much better for the property than the previously proposed four (4)-lot subdivision. He also noted that he has recruited the help of Mark West, Wetland Scientist, for this project.

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Mr. Viel asked Mr. Haney for his application review. Mr. Haney noted the following:

- The applicant did not request any waivers.
- He had not been made aware of a hydrogeological study done.
- Certain notifications are necessary as part of the stream overlay district.
- In terms of application completeness, it appears that the Board is able to vote on it.

***Mr. MacKinnon made the motion to accept Case # 23-002 SUB Concrete Products as complete. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 7-0-0.***

***Mr. MacKinnon made the motion that Case # 23-002 SUB Concrete Products is not a development of regional impact. The motion was seconded by Ms. Andersen. The motion was unanimously approved by a vote of 7-0-0.***

Mr. Viel proposed that the applicant consider creating one (1) large and two (2) smaller, ending where the wetlands start, instead of three (3) 10-14 acre lots. Mr. Boyd thanked Mr. Viel for the suggestion but advised that this is what his client would like to propose.

Mr. Viel noted that the Board has a proposed Zoning Amendment to add a twenty-five (25) foot no disturb vegetative buffer around wetlands. He recommended that the final plan include the vegetative buffer, should the Zoning Amendment be approved by the townspeople.

Mr. Viel noted that this new application would need to be reviewed by the Lamprey River Advisory Committee with an opportunity for them to provide comment. Mr. MacKinnon advised that what the conditions on the plans show would likely trigger an Alteration of Terrain (AOT) permit, and that the Board cannot approve an application that requires an AOT permit. Discussion followed regarding the application removing the proposed contours shown in the plans. Mr. Boyd reported that he is in favor of this.

Ms. Mooney asked for clarification regarding some of the measurements and the scale of the application drawings. Mr. Viel recommended adding some consistent labeling to the final plans in order to make them easier to interpret.

Ms. Mooney noted that the Nottingham Conservation Commission would welcome the opportunity to review and comment on the new plan set and that their next meeting is scheduled for Monday, March 13<sup>th</sup>, 2023. Mr. Boyd reported that he would not be able to attend. Ms. Mooney replied that the Commission would look over the application and provide written feedback for the applicant's review.

Mr. Boyd inquired as to whether or not the applicant would receive conditional approval tonight. Mr. Viel responded that the case would very likely be continued to a later meeting, due to the need for input from outside organizations. He advised that the Board would send a communication out to the Lamprey River Advisory Committee (LRAC) asking for comment. Mr. Boyd asked if his team as well as Mr. West could be included in that communication.

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Mr. Viel opened the public hearing at 8:27PM. Seeing none, he closed the public hearing at 8:29PM.

***Mr. Anderson made the motion to continue Case # 23-002 SUB Concrete Products to the April 12<sup>th</sup>, 2023 meeting at 7:00PM with deliverables due one week prior, by April 5<sup>th</sup>. The motion was seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.***

***Case # 23-003 LLA Kung Food, LLC: Application from Kung Food, LLC requesting Planning Board Approval of a Lot Line Adjustment in the Commercial / Industrial Zone of Nottingham, NH between properties identified as Tax Map # 4, Lot #'s 2 and 2-1.***

Sam Kauhl of The Dubai Group came forward and introduced himself on behalf of the applicant. His team put together this Lot Line Adjustment (LLA) plan between Tax Map #4, Lot 2-1 and Tax Map #4, Lot 2. The LLA plan shifts the lot line between the two parcels fifty (50) feet. A total of 0.365 acres would be added on to Lot 2-1 and subtracted from Lot 2. Mr. Kauhl noted that this came before the Board at least a few months or a year ago. The reason for the LLA at this time is to move the proposed septic system. The new location would be downhill slightly to utilize gravity as well as to preserve the historic and aesthetic value of the site. The new location would not disturb any stonewalls or large trees.

Mr. Viel asked Mr. Haney for his review of the application. Mr. Haney noted that it appears complete. The applicant has not requested any waivers. No additional permits are required at this time. He advised that there is not as much information to review in a case like this.

***Mr. MacKinnon made the motion to consider Case # 23-003 LLA Kung Food, LLC as complete. The motion was seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.***

***Mr. MacKinnon made the motion that Case # 23-003 LLA Kung Food, LLC is not a development of regional impact. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 7-0-0.***

Mr. Viel noted that it appears that the applicant is taking a lot that may technically be nonconforming and making it larger and therefore more conforming. He stated that adding the setback for the septic system is a good idea. He asked if the full parking area is shown on the plans. Mr. Kauhl replied that it is not. Mr. MacKinnon noted that there are materials stockpiled on-site for the parking area but that the space has not been shaved down yet.

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288 Mr. Viel asked if the abutting parcel would still have a Nitrate Loading Easement. Mr. Kauh  
289 replied that it would.

290

291 Mr. Viel stated that sometimes for Lot Line Adjustments, the Board requires that the applicant  
292 makes sure that the existing lot is still a buildable lot and that they are not creating a non-  
293 buildable lot, given the size of the area being proposed and the overall size of the parent parcel.  
294 He noted that this does not appear to apply to this case.

295

296 Mr. MacKinnon recommended that the new lot line have a pin placed in the middle, as it is 317  
297 feet because the Town has a limit of 300 feet between monuments.

298

299 Mr. Viel opened the public hearing at 8:41PM. Seeing none, he closed the public hearing at  
300 8:42PM.

301

302 *Mr. MacKinnon made the motion to approve Case # 23-003 LLA Kung Food, LLC with*  
303 *standard conditions plus a requirement for an additional iron pin along the proposed lot line*  
304 *to meet the 300 feet or less requirement of the Subdivision Regulations and adding annotation*  
305 *to the front granite bound on Route 4. The motion was seconded by Ms. Mooney. The motion*  
306 *was approved by a vote of 6-1-0.*

307

308 **Other**

309

310 Mr. Viel advised that the Board had received Town Counsel responses to a couple of different  
311 documents. Normally, if Town Counsel recommends edits, those edits are set to the applicant. If  
312 there are questions from Town Counsel or if something requires a third-party review, the Board  
313 looks at it. The two cases that Town Counsel provided feedback on were:

- 314 • *Case # 20-003 SUB Diberto - Mitchell Rd. Review Town Counsel response to legal*  
315 *documents and sign mylar if possible.*
- 316 • *Case # 22-014 SUB Falzone - Stevens Hill Rd. Review Town Counsel response to legal*  
317 *documents.*

318

319 *Review updated information on Deerfield Subdivision Case – located at 206 Nottingham Rd.,*  
320 *Deerfield, NH*

321

322 This case involves a parcel partially located both in Deerfield and in Nottingham. Mr. Viel  
323 recalled that the Board had discussed this at a recent meeting. Mr. Haney received a copy of the



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plan set that outlines a three (3) lot subdivision with no proposed impact to abutting Nottingham land.

***Review recent NHDES Notices / Abutter Notifications***

Mr. Viel noted that there is not much that the Board can take action on at this time.

**Public Comment**

None.

**Approval of Minutes**

*Ms. Mooney made the motion to accept the minutes of January 11<sup>th</sup>, 2023, January 25<sup>th</sup>, 2023, and February 8<sup>th</sup>, 2023 as amended. The motion was seconded by Ms. Andersen. The motion was unanimously approved by a vote of 7-0-0.*

**Select Board and Staff / Board Member Updates**

Mr. Davies had no update.

Mr. Anderson reported that he has not signed up to run again for a position on the Planning Board. He expressed that he has enjoyed working with the Board. Mr. Viel thanked Mr. Anderson for his time on the Board and for his commitment to various other town committees and causes.

Mr. Morin reported that the new Town Administrator, Ellen White, will be starting on March 20<sup>th</sup>, 2023. The Select Board is still reviewing the Town facility problems. They are gearing up for Election Day on Tuesday, March 14<sup>th</sup>, 2023.

Mr. MacKinnon had no update.

Mr. Viel reported that he recently attended the virtual webinar from the New Hampshire Municipal Association. The updated 2022-2023 NH Planning Land Use handbooks have been received and distributed to members of the Planning and Zoning Boards. He reiterated that Election Day is coming up and that the Board has a couple of warrant articles on the ballot.

Ms. Mooney reported that at the last Select Board meeting, the Nottingham Conservation Commission had two representatives talk to members of the Select Board about trying to find an alternative solution for rats and other rodents getting into the building. The current technique that is contracted is black boxes that contain rodenticide. These boxes are not instant kills. The rodents are eating the poison and retuning to the environment, where they are preyed upon by other wildlife and sometimes pets. The Select Board has charged the Commission with researching alternatives to the black boxes, which cost about \$6,000 per year.

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369 Ms. Sandler had no update.

370

371 Ms. Andersen reported that she recently attended a meeting of the Strafford Regional Planning  
372 Commission (SRPC). The agency has a position open for a Senior Planner. The Regional  
373 Housing Plan is open for public comment until March 14<sup>th</sup>. This particular meeting was a round  
374 table discussion.

375

376 Mr. Haney advised that SRPC has a newsletter that contains some very useful information if  
377 anyone is interested in subscribing to it. He stated that he and another SRPC member will be  
378 spearheading the update to Nottingham's Hazard Mitigation Plan, which is reviewed every five  
379 years.

380

381 **Adjourn**

382

383 The meeting was adjourned at 9:14PM.

384

385

386

387

388

389 Respectfully submitted,

390 Rachel Russell Leed, Transcriber