

Nottingham Planning Board
May 11, 2016

Accepted: June 8, 2016

Members Present: Dirk Grotenhuis, Chair; Eduard Viel, Vice-Chair; Susan Mooney, Secretary; Gary Anderson, SRPC Rep; John Morin; Teresa Bascom; Robert “Buzz” Davies, Alternate;

Members Absent: Charlene Andersen, Ex Officio

Others Present: Tiler Eaton, Ex- Officio Alternate; Paul Colby, Code Administrator; JoAnna Arendarczyk, Land Use Clerk; Tim & Cleste Schmitt, Abutter; Dave Finn, Town Resident; Kevin & Karen Higginbotham, Abutter; Peter Landry, Surveyor; Shane Wilson, Abutter; Joe Coronati, Jones & Beech Engineers; Roscoe Blaisdell, Surveyor; Steve LaMonica, Abutter; Sam Demeritt, Nottingham Conservation Commission; Ken & Gloria Sachs, Applicant; Tara Saxton, Applicant; Christine Tofani, Abutter; Marian & Steve Tarafe, Abutter; Dan & Marna St. Onge, Abutter; Scott Gove, Abutter; Jose Guera, Abutter; Steve & Marian Tatarczuk, Abutter; Kevin Jordan, Abutter; Chris Albert, Jones & Beech Engineers; Cindy Bloom, Abutter; Lilia Guerra, Abutter; Bill & Janet Hall, Abutter; Pam & Jim Kelly, Abutter; Martha Smith, Abutter

Call to Order: 7:00pm

Mr. Colby spoke to the Board regarding the legal issue raised from the last meeting, April 27, 2016. He stated that the reply from counsel (provided to each Board member separately from the binder packets) is not for public knowledge. However the letter sent to the attorney (*attached*) and the discussion regarding the issue needs to be done in a public session. The applicants will be allowed to ask questions during their Public Hearings and Mr. Colby as the Board’s acting agent will answer. The issue needs to be raised during each Public Hearing which this matter applies to.

Mr. Colby allowed the Board members to silently read the lawyer’s reply. Once they read the reply Mr. Chairman asked for a vote for those in favor or opposed to accepting the opinion of the Town Lawyer.

Vote: 6-1-0 **The Opinion of the Lawyer was accepted**

Mr. Colby informed the public that “Our Town attorney has advised this Board on the legal question on how to do we calculate the 30,000 square foot buildable area? Do we use the 20 foot or the 50 foot setbacks? Our attorney states that this Board shall use the 50 foot setbacks to determine all buildable area of the 30,000 square foot contiguous area lot envelope. This is based on his opinion of reading our Subdivision Regulations and our Zoning regulations as well as Doyle vs. the Town of Gilmanton, a very similar case decided in the courts in 2007.”

The Cases pertaining to the legal issue:

- **Case #P16-004-SUB “The Smoke Street Subdivision”**
- **Case #P16-005-SUB “The Flutter Street Subdivision”**
- **Case #P16-007-SUB “The Anderson Subdivision”**

Applicant’s opportunity to speak to the legal issue:

Mr. Landry, the surveyor for both Case #P16-004-SUB “The Smoke Street Subdivision”, and for Case #P16-007-SUB “The Anderson Subdivision”, asked for the attorney’s reply to be read or copies made for the applicants. Mr. Colby replied that was not recommended by our attorney, it is “client/ attorney privilege”.

Mr. Landry gave some history on the issue: In the Planning Board section of the 2014 Town Report it talks about three (3) changes were explored for warrant articles for 2015. One of the changes (Article #2 on 2015 Town Election ballot) “will reduce setbacks in

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lots of two acres or greater from the side and rear property lines for accessory buildings. The new set back will be no less than 20 feet from property lines.” The change was a result of a joint meeting between the Planning Board and the Zoning Board of Adjustment. He then summarized the section regarding Article II in the minutes from the 2015 Annual Meeting, when the vote for the setbacks change was: YES 691 NO 348. Mr. Landry read the section on lot size in the current Zoning Ordinance: “Each lot must contain a 200’x 200’ square fit for building or a thirty thousand (30,000’) square foot contiguous area lot envelope in which a house and septic system shall be placed to meet all existing setbacks ordinances....” He stated that in his opinion and in talking with the Building Inspector a year ago “we’d be able to stretch the 30K to a point 50 feet on the road 20 feet on the sides and your appropriate setback distance from the wetland and that is basically what we’ve done.” He asked Mr. Colby if the attorney addressed the action the Town took to reduce the setbacks and if the septic system can be within 20 feet from the lot line and the septic and the house have to be part of the 30K than why can’t the 30K be measured in the 20 foot setback?

Mr. Colby replied that the attorney said the more stringent setback requirement is the 50 foot setback for the 30k area for the dwelling. That setback was not changed, the septic setback was. Septics and outbuildings can be placed within the 20 foot setback. The attorney suggested a language change for the future.

Mr. Colby informed the applicants, which this ruling affects, that they have two options:

1. Redraw plans to show the 30K buildable area within the 50 foot setbacks
2. Appeal to the Zoning Board of Adjustment and seek relief from them on this issue

Public Hearings

Discussion for the following case began: 7:15pm

2nd Continuation-Case #P16-004-SUB – Applications from J&L Terra Holding, INC. for a conventional five (5) lot subdivision on 20.331 acres on Smoke Street in Nottingham, NH. Property is identified as Tax Map 10 Lot 4 Sublot 1.

Mr. Landry spoke to the Conservation Commission’s (CC) meeting on May 9th and the site walk on May 10th with the Conservation Commission. He agreed to add the buffer for the Critical Wetlands down by Little River. Due to the attorney’s opinion on buildable area, he would like to meet with the Board in a couple weeks with revised plans.

The next meeting the Board could hear this case would be June 8, 2016.

Mr. Chairman stated for the record that ***“based on our attorney’s legal opinion the submitted plans shall show contiguous 30,000 square foot building area to be calculated using a setback of 50 feet from all lot lines and to use the more restrictive setback from the environmental areas; the wetlands.”*** He added that he will repeat this several more times during the meeting.

Public comments 7:35pm

Mr. Demeritt, chairman for the CC, presented their findings from the site walk done on Tuesday May 10th. He found that the application plans are in the high and dry areas and are the best use for the property away from the wetlands.

Mr. Viel asked if there was a discussion regarding the invasive species. Mr. Demeritt stated that they weren’t detrimental species.

Motion made by: Mr. Viel to “continue Case #P16-004-SUB to our first June meeting, June 8th, 2016 at 7:00pm.”

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Seconded by: Mrs. Mooney

Vote: 7-0-0 Motion Passed

Discussion for this case ended: 7:38pm

Discussion for the following case began: 7:41pm

2nd Continuation

Case #P16-005-SUB – Application from Chuck Minasalli of PTC Realty Limited to review and approve a yield plan for an open space, 24 lot subdivision on 87.16 acres on Flutter Street in Nottingham, NH. Property is identified as Tax Map 44 Lot 12.

Mrs. Mooney recused herself due to being an abutter in this case

Mr. Davies was seated for Mrs. Mooney

Mr. Coronati and Mr. Albert from Jones and Beech Engineers informed the Board that the current plans parcels don't meet the current interpretation of the setbacks. They will redesign again- 3rd redesign.

Mr. Coronati wasn't at the previous meeting when the loop road was proposed. He asked what the concern was with that plan.

Mr. Chairman replied that it was the proximity of the two roads exiting on to Flutter Street and the distance between the two roads.

Mr. Colby reminded the applicants of a suggestion that was presented to Mr. Albert when he presented a conceptual review for this location almost a year ago; a lollipop design similar to Dwight Road. It has one road in that makes a loop back on to itself. The maximum 2000 feet regulation would go to farthest point from Flutter Street.

Mr. Coronati also asked the Board for clarification of the calculation in the Multi- family regulations.

Mr. Colby referenced Article II f3b. He stated that as long as there are two acres of buildable land per unit it can be done on one parcel.

Mr. Chairman reiterated the Attorney's reply in bold and italics above.

Public Comments: 7:58pm

Ms. Bloom asked a few questions that were premature at this stage in the plans.

Motion made by: Mr. Anderson to "continue Case #P16-005-SUB to June 8th 7:00pm."

Seconded by: Mrs. Bascom

Vote: 7-0-0 Motion Passed

Discussion for this case ended: 8:02pm

Mrs. Mooney was reseated

Mr. Davies was un-seated

Public Hearing Opened: 8:04pm

Initial Hearing

Case #P16-006-SUB – Application from Roscoe Blaisdell of Blaisdell Survey LLC for a 6 Lot Subdivision of 98+/- acres on Sachs Road and Mountain Road in Nottingham, NH. Property is owned by Kenneth Sachs and Joanne Soloman and is identified as Tax Map 71 Lot 150.

Mr. Colby recommended the Board accept the application as complete.

Motion made by: Mr. Viel to "accept the application as complete for Case #P16-006-SUB."

Seconded by: Mr. Anderson

Vote: 7-0-0 Motion Passed

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Roscoe Blaisdell, the surveyor, septic designer, and wetland scientist for the project, informed the Board of the plans. Mr. Sachs wants to cut off five (5) building lots from the 98 acres parent parcel located on Sachs Road and Mountain Road.

Mr. Blaisdell addressed the fact that he will need to recalculate the buildable areas on lots 150-1, 150-3, 150-4 due to a few 25% slopes issues. He added that all the houses will have sprinklers installed so a cistern will not be needed. All of the lots will be accessed on Mountain Road not Sachs Road.

Mr. Sachs informed the Board that he has gone to the State on a preliminary basis and was informed that the driveway permits would be accepted as proposed.

Mr. Chairman asked about Sachs Road being incorporated in some of the lots. He asked if the Road will be maintained as far as access and easements go.

Mr. Blaisdell stated that the houses will be in the front just off Mountain Road and "life will go on as usual."

Mr. Colby added that he suggested the Deed for lots (150-1, 150-2, 150-3, 150-4, and 150-5) record information about the Right of Way of Sachs Road.

The Board and Mr. Sachs had discussion regarding the maintenance on Sachs Road. Mr. Sachs stated that he maintains the road.

It was noted that the applicant provided an old plan from a survey done in 1993 for lots that have already been built upon. These lots have the same numbers as the current proposed lots and don't show the location of the current proposed lots.

Two options were proposed:

1. Submit new plan showing the new proposed lots on the acreage
2. Or a waiver for showing the whole lot

Mr. Viel also noted that the plans need to show the buildable area on the remaining parcel.

Mr. Colby finished addressing his notes (in file).

Mr. Chairman reiterated the Attorney's reply in bold and italics above.

Public Comments: 8:25pm

Ms. Guerra spoke of some concerns with the proposed subdivision and some language for the Deeds. She is concerned about people crossing her property on Sachs Road to gain access to the lake.

Mr. Blaisdell informed her that the driveways will be off Mountain Road not Sachs Road.

Mr. Morin noted that the real concern is with people allowing others to use the private boat launch on Sachs Road and allowing them lake access.

Ms. Kelley spoke to the Rights of Way of Sachs Road. She expressed concern about the language speaking to the new lots that these lots will not have Rights of Way.

The language regarding the Right of Way will be addressed at another hearing.

Mr. Sachs assured the public that the residents of the new lots will not have lake access rights through Beach Head Drive.

Mr. Roscoe asked if the Board would likely grant a waiver for showing the overall lot.

Mr. Chairman stated that the Board would likely grant the waiver to not require a survey of the overall parcel but to clarify the location of the new lots on the full lot size plans.

Mr. Colby recommended a continuance until June 8th.

Motion made by: Mrs. Bascom "to continue Case #P16-006-SUB be continued until the June 8th meeting at 7:00pm."

Seconded by: Mr. Morin

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184 **Vote: 7-0-0 Motion Passed**
185 **Public Hearing Closed: 8:47pm**
186 **Public Hearing Opened: 8:49pm**
187 **Initial Hearing**
188 **Case #P16-007-SUB** – Application from Gary and Lorraine Anderson for a 2 Lot
189 Subdivision of 5.215 acres on Gile Road in Nottingham, NH. Property is owned by Gary
190 and Lorraine Anderson and is identified as Tax Map 27 Lot 1.
191 **Mr. Anderson recused himself due to being one of the applicants**
192 **Mr. Davies was seated for Mr. Anderson**
193 Mr. Colby recommended the Board accept the application as complete.
194 **Motion made by:** Mr. Viel to “accept the application for #P16-007-SUB as complete.”
195 **Seconded by:** Mr. Morin
196 **Vote: 7-0-0 Motion Passed**
197 Mr. Landry and Mr. Anderson introduced themselves. Mr. Colby handed Mr. Landry his
198 notes on the plans (in file). Mr. Landry addressed each issue.
199 One of the notes was explaining the title “Use and Enjoyment Easement” the title means
200 use for snow removal, large trucks like UPS deliveries etc.
201 Mr. Landry stated that he will need to redesign the plans due to the attorney’s
202 interpretation of the setbacks.
203 Mr. Colby stated that the staff’s opinion is there is great hardship to show the full 30K to
204 redesign due to the landscape and slopes. Therefore a recommendation option is to seek
205 Zoning Board Approval.
206 Mr. Viel noted that the application will need to go to the CC for review prior to final
207 subdivision approval due to this section of Gile Road being a Scenic Road. (See
208 Subdivision Regulations Section 15.3.6 sub section 2.)
209 **Public Comment: 9:05pm**
210 None
211 Mr. Colby recommended a continuance until June 8th.
212 **Motion made by:** Mrs. Bascom to “continue Case #P16-007-SUB until June 8th at
213 7:00pm. “
214 **Seconded by:** Mr. Morin
215 **Vote: 7-0-0 Motion Passed**
216 **Public Hearing Closed: 9:06pm**
217 **Public Meeting**
218 *Impact Fees contract
219 Mr. Colby explained the reason for one contract instead of two. If we get this agreement
220 to Mr. Mayberry by the end of May then Mr. Mayberry can get the results to Board by
221 the end of November. This is budgeted for.
222 **Motion made by:** Mrs. Mooney to “accept this contract from BCM Planning LLC for his
223 consultant services for the Impact Fee study.”
224 **Seconded by:** Mr. Viel
225 **Vote: 6-1-0 Motion Passed**
226 Note from CC- homework to discuss at work session May 25th with CC
227 **Mr. Anderson was reseated**
228 **Mr. Davies returned to non-voting Alternate status**

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Mrs. Mooney pointed out the items in the rankings. Item #1 is a separate item requested for the Board to consider (wild life action plan).

The Master Plan is on the Town Web site or contact the Land Use Clerk for the sections to be e-mailed or printed.

Public Comment

None

Board of Selectman and Staff/ Board Members Update

Tiler Eaton, sitting for Ms. Andersen, informed the Board that there has been some discussion regarding closing certain roads to large trucks. He also informed the Board that the "Old Town Hall" may be leased to Nottingham Community Child Care Center. Mr. Morin announced that he has reconsidered and would accept an appointment to the CIP committee.

Motion made by: Mr. Viel to "appoint John Morin as our representative to the CIP committee."

Seconded by: Mrs. Mooney

Vote: 7-0-0 **Motion Passed**

Mr. Anderson informed the Board that he is attending the Annual SRPC meeting on May 26th and looks forward to giving an update at the next meeting.

Mr. Viel reminded the Board to send comments for the Site Plan Regulations update to Mr.Colby by the May 25th meeting.

Approval of Minutes

April 13, 2016

Motion made by: Mr. Viel to "approve the minutes of April 13, 2016 as amended."

Seconded by: Mrs. Bascom

Vote: 7-0-0 **Motion Passed**

April 27, 2016- Tabled

Adjournment

Motion made by: Mrs. Bascom

Seconded by: Mr. Anderson

Vote: 7-0-0 **Motion Passed**

Adjourned at: 9:23pm

Respectfully submitted,

JoAnna Arendarczyk

Land Use Clerk