

Nottingham Planning Board Meeting

DATE: December 14, 2022

Official Minutes – Approved

1 **Call to Order**

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

6

7 **Members Absent:** Sherry Sandler, Member.

8

9 **Alternate Seated and Voting:** Mr. Davies was seated and voted for Ms. Sandler.

10 **Others Present:** Blair Haney, SRPC; Alana Kenney, Land Use Clerk; George Saurman, Shea
11 Concrete; Taylor Dowdy, Shea Concrete; Barry Gier, Jones & Beach Engineering; April Burditt,
12 Abutter; Jeffrey Burditt, Abutter; Diane Lapite, Abutter; Sam Demeritt, Nottingham
13 Conservation Commission Chair.

14

15 **Call to Order**

16

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

18

19 **Roll Call**

20

21 Roll call was completed.

22

23 Mr. Viel stated that Ms. Jones will be participating but will not be voting tonight.

24

25 **Public Hearings**

26

27 *Case # 22-011-SUB (continued): Application from Jones & Beach Engineering, on behalf of*
28 *Jim Rosborough, requesting an eleven (11) lot subdivision. The property is located on Mooers*
29 *Road, in Nottingham, NH, and is identified as Tax Map 72, Lot 13-1. The applicant has filed a*
30 *Conditional Use Permit.*

31

32 Mr. MacKinnon recused himself from this case and left the table. Ms. Jones will be seated and
33 voting for Mr. MacKinnon.

34

35 Barry Gier of Jones & Beach Engineering came forward and introduced himself on behalf of the
36 applicant. He stated that, since the last meeting, his team has done the following:

37

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41

- Attended a Raymond Planning Board meeting and obtained their approval. The only input they had was that the Board should be aware that, on new projects, Raymond requires a turn-around at the town line.
- Provided the Board with the Natural Heritage Bureau (NHB) report. The only flag was for the Blandings turtle.

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- 42 • Provided the Wetland Report and the Vernal Pool Report, as well as a response to the
43 Lamprey River Advisory Committee.
44 • Provided updated documents forming the Homeowner’s Association (HOA), with the
45 added protections that had been previously discussed.
46 • Provided the Board with an alternative yield plan depicting an eleven (11) lot standard
47 subdivision. They still believe that the original yield plan is valid and that the wetland
48 impact is reasonable.
49

50 Mr. Gier advised that they are requesting three (3) Conditional Use Permits:

- 51 1. Allow the elimination of the 100-foot landscape buffer associated with the open space
52 subdivisions.
53 2. Wetland impact of eighty-three (83) square feet associated with the culvert replacement.
54 3. Allow lot sizes greater than 45,000 square feet.
55

56 Mr. Gier suggested that the Board, if there are any questions left regarding the yield plan, vote on
57 said yield plan. This will allow the applicant to determine how they are going to proceed.
58

59 Mr. Viel asked for clarification regarding the town line turn-around required by Raymond. Mr.
60 Gier reiterated that Raymond requires this for new projects, and since this is not a new road, it is
61 still up for debate.
62

63 Mr. Viel advised that the Board had sought, and received, input from Town Counsel regarding
64 the initial yield plan and how to interpret it.
65

66 ***Ms. Mooney made the motion to move into a non-public session per RSA 91-A:3 II(l). The***
67 ***motion was seconded by Ms. Andersen. The motion was approved by a roll call vote of 6-0-1***
68 ***(Ms. Jones abstained).***
69

70 The Board exited the room and entered into the non-public session. They returned after fifteen
71 minutes.
72

73 ***Ms. Mooney made the motion to close the minutes and the non-public session per RSA 91-A:3***
74 ***III. The motion was seconded by Ms. Andersen. The motion was unanimously approved by a***
75 ***roll call vote of 7-0-0.***
76

77 A discussion was held regarding cisterns versus sprinkler systems. Mr. Gier recalled that the Fire
78 Chief had recommended the installation of a cistern on Mooers Road and that the two houses on
79 Jampsa Trail would be equipped with sprinkler systems. Mr. Morin suggested that all houses, on
80 either Mooers Road or Jampsa Trail, be equipped with sprinkler systems in order to save time
81 and money. Mr. Gier advised that his team would move toward the Fire Chief’s
82 recommendations with a cistern on Mooers Road. Mr. Gier indicated if a cistern is required on
83 Jampsa Trail, they would push back on that as other recent subdivisions have been approved with
84 sprinklers versus a cistern.
85

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86 Mr. Viel reported that he would get the HOA language submitted to Town Counsel for their
87 review.

88

89 Mr. Viel stated that the Board had received a response from the Building Inspector/Code
90 Enforcement Officer in regard to the question about the intermittent or first-order stream. It was
91 determined that the stream is not impactful, no matter which classification it falls under.

92

93 Mr. Viel invited discussion about the three Conditional Use Permits (CUP).

94

95 Mr. Gier explained that the first Conditional Use Permit that they are requesting is a conditional
96 use to Article IV Section S.8.g of the *Zoning Ordinance* to allow the elimination of the 100-foot
97 landscape buffer. He advised that, because his team is not creating any new roads and all of the
98 lots are frontage lots, they are asking for elimination of that 100-foot landscape buffer. This will
99 keep the lots further from the wetland and allow construction closer to the road. This would also
100 make the proposed lots more similar to the existing lots in the area.

101

102 ***Ms. Andersen made the motion to accept the Conditional Use Permit requested per Article IV***
103 ***Section S.8.g. The motion was seconded by Ms. Mooney. The motion was unanimously***
104 ***approved by a vote of 7-0-0.***

105

106 Mr. Gier stated that the second Conditional Use Permit was to Article III Section B.6 of the
107 *Zoning Ordinance* to allow a wetland impact of eighty-three (83) square feet for culvert
108 replacement under Mooers Road. He reiterated that the existing culvert under Mooers Road is
109 currently undersized and will continue to be undersized until it is replaced. They are proposing
110 the replace the existing culvert, which requires a wetland impact of eighty-three (83) square feet.

111

112 Mr. Viel advised that this is the Wetland Overlay District, a different article, which outlines
113 criteria for the Conditional Use Permit. The criteria are as follows:

- 114 • The proposed construction is essential to the productive use of land not within a wetland
115 conservation area, and the area considered for development is not smaller in acreage than
116 the wetland area being considered.
- 117 • Designs, construction, and maintenance methods will be such as to minimize detrimental
118 impact upon the wetlands and will include restoration of the site as nearly as possible to
119 its original grade and conditions.
- 120 • The Nottingham Conservation Commission has provided comments relative to the value
121 of the wetland under construction and design the proposed project as it relates to the
122 wetland.
- 123 • Economic advantage alone is not a reason for the proposed construction.
- 124 • Prior to the granting of the Conditional Use Permit under this section, the applicant shall
125 agree to submit a performance security to ensure all construction is carried out in
126 accordance with an approved design.
- 127 • The Planning Board may require the applicant to submit an Environmental Impact
128 Assessment when necessary to evaluate an application made under this section.

129

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130 ***Mr. Anderson made the motion to accept the Conditional Use Permit that's requested per***
131 ***Article III Section B.6. The motion was seconded by Ms. Jones.***

132
133 Ms. Andersen proposed that, if an amendment to the motion was made, it would be to remove
134 the piece of it that is not applicable to the Conditional Use Permit.

135
136 ***Mr. Anderson amended the motion to say that the impact is not applicable to a wetlands buffer***
137 ***or driveway. The motion was seconded by Ms. Jones. The motion was unanimously approved***
138 ***by a vote of 7-0-0.***

139
140 Mr. Gier stated that the third Conditional Use Permit was to Article IV Section S.8.a of the
141 *Zoning Ordinance* to allow open space lots greater than 45,000 square feet. This is for Lots 4-9.

142
143 Mr. Viel stated that he generally is in favor of a project meeting the *Zoning Ordinances* if it is
144 able to do so without causing a reduction in yield.

145
146 Mr. Morin reported that he prefers to see the lots bigger.

147
148 ***Ms. Andersen made the motion to not accept the Conditional Use Permit requested per Article***
149 ***IV Section S.8.a so as to be more in-line with the lot size of the open space subdivision plan.***
150 ***The motion was seconded by Ms. Mooney. The motion was approved by a vote of 5-2-0.***

151
152 Mr. Gier advised that, because of this denial, his team would need to go back to the drawing
153 board and provide the Board with a formal Option A.

154
155 Ms. Mooney thanked Mr. Gier for his language on the use of pesticides and herbicides in the
156 HOA documentation.

157
158 Ms. Andersen recommended that the Board receive a final recommendation from the Fire Chief
159 in regard to the fire suppression systems for the Mooers Road and Jamps Trail lots.

160
161 Ms. Andersen recalled that Mr. Gier and his team had mentioned that they would get back to the
162 Board as to whether or not beach access was going to be allowed. Mr. Gier replied that the
163 declarations declare that the landowners will be allowed beach access.

164
165 Mr. Viel opened the public hearing at 8:08PM.

166
167 Diane Lapite came forward and identified herself as a resident of 34 Mooers Road and an abutter
168 to the proposed subdivision. She stated that the Raymond bus uses the top of Mooers Road as a
169 turn-around but does not come down it. She expressed concern regarding the creation of a turn-
170 around spot. She also reported that she had attended the same Raymond Planning Board meeting
171 as the applicant and noted that the Town of Raymond had indicated that, should there be any
172 damage done to their section of Mooers Road during the subdivision construction process, the
173 Town of Nottingham and/or the applicant would be responsible for making any necessary
174 repairs.

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Mr. Haney clarified that Raymond had not said anything definitive about a necessary turn-around, but rather had asked that Nottingham consider requiring it.

Ms. Lapite inquired as to whether or not it would be written in the deeds that the subdivision landowners have beach access. Mr. Viel advised that Mr. Gier would answer this once he returned in front of the Board.

Mr. Viel closed the public hearing at 8:20PM.

Mr. Gier came forward again. He advised that he thought the language regarding beach access was in the covenants but that they are not. He stated that he believes it is still the applicant's intent to include allowed beach access in the covenants.

Mr. Morin advised that the applicant will only be able to grant beach access of land where the access is written into his own deed. Mr. Gier confirmed that the beach access that has been discussed is the privately owned small cove at the very end of Mooers Road.

Mr. Viel noted that the Board may need to reach out to the Raymond Planning Board and ask for a formal letter outlining what they will require if this subdivision is approved.

Ms. Mooney brought up Article IV Section S of the *Zoning Ordinance* that talks about the protection and management of open space. She read that Section D states that the developer is responsible for the maintenance of the common area and other facilities until such time that a homeowner's association is capable of assuming responsibility. She asked if Jones & Beach Engineering would be responsible for maintaining the open space until an HOA is formed. Mr. Gier replied that he would need to look into it but would assume that the landowner/applicant would assume responsibility until the lots had been sold and an HOA formed.

Mr. Viel asked that Mr. Gier look into Section G, which mentions a one-time stewardship fee, as well.

Mr. Viel summarized that Mr. Gier will look into a couple things requested by the Board and be in touch with the Land Use Clerk, then the finalized language will be sent to Town Counsel for review and comment. He advised that the Board would reach out to the Fire Chief for a final review and comment.

Ms. Mooney made the motion to continue Case # 22-011-SUB to the January 25, 2023 at 7:00PM meeting with deliverables due by January 18, 2023. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 8-0-0.

Mr. MacKinnon returned to his seat at the table and Ms. Jones returned as a participating alternate but not voting alternate.

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219 *Case # 22-007-SIT: Application from David Beati of BSC Group representing Concrete*
220 *Products of Londonderry requesting approval to build a pre-cast concrete manufacturing*
221 *facility. The property is located at 160 Old Turnpike Road, in Nottingham, NH, and is*
222 *identified as Tax Map 3, Lot 2-2.*

223

224 Mr. Viel recused himself from this case, and left the table. Mr. MacKinnon assumed Chair
225 duties.

226

227 Mr. MacKinnon reminded the Board that this case had been conditionally approved in August of
228 this year. He asked for an update as to what conditions have or have not been met.

229

230 Taylor Dowdy of BSC Group came forward and introduced himself on behalf of Shea Concrete.
231 Joining him was George Saurman of Shea Concrete. He advised that he is not the original
232 engineer on this project and that he had taken it over a few weeks ago. He confirmed that his
233 team has approached the New Hampshire Department of Transportation (NHDOT) to get a
234 driveway permit. They have approved the New Hampshire Department of Environmental
235 Services (NHDES) to get an Alteration of Terrain (AOT) permit. They plan to finalize and
236 submit both of these applications in the next week.

237

238 Mr. MacKinnon asked if any of the plans have changed since they were last before the Board.
239 Mr. Saurman replied that there have been. One is that NHDOT wanted the sign moved slightly
240 further away from Route 4, which is in progress. Another change is that there is a driveway
241 easement for a house on the front of the property that Shea Concrete owns. It was on the original
242 subdivision plan but was never recorded. He noted that the lawyers are doing the paperwork
243 now.

244

245 Mr. MacKinnon directed that the team submit copies of any submissions to the Land Use Clerk.
246 The applicants were excused.

247

248 Mr. Viel returned to his seat at the table and resumed Chair duties.

249

250 **Other**

251

252 *Discussion of Possible Zoning Ordinance / Subdivision Regulations / Site Plan Changes*

253

254 Mr. Viel stated that the most completed ordinance is the Aquifer Protection District changes as
255 drafted by SRPC as part of a grant for Nottingham and other communities. Mr. Haney
256 recommended that it be sent off to Town Counsel for review, with enough time to get it back in
257 time to be able to post it before the first public hearing in January.

258

259 Discussion was had about replacing the “special exceptions” with Conditional Use Permits and if
260 wellhead protection area should be included. The Board opted to not include the wellhead
261 protection area at this time as the impact of adding this will need to be considered more
262 including how many properties may be impacted.

263

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264 ***Mr. MacKinnon made the motion to notice the January 11, 2023 meeting at 7:00PM the***
265 ***modifications and updates as amended to Article IIIA, the Aquifer Protection District, of the***
266 ***Nottingham Zoning Ordinance. The motion was seconded by Ms. Mooney. The motion was***
267 ***unanimously approved by a vote of 7-0-0.***

268

269 Mr. Viel read Portsmouth’s definition of “impervious surfaces”: “any modified surface that
270 cannot effectively absorb or infiltrate water. Impervious surfaces include, but are not limited to,
271 roofs and paved areas such as driveways, parking areas, or walkways. Impervious surfaces also
272 include decks, patios, and gravel or crushed stone surfaces unless such structures or surfaces
273 have been designed to effectively absorb or infiltrate water.”

274

275 ***Ms. Andersen made the motion to put the “impervious surface” definition on the January 11,***
276 ***2023 meeting. The motion was seconded by Mr. Anderson. The motion was unanimously***
277 ***approved by a vote of 7-0-0.***

278

279 Ms. Andersen recalled that the Board had decided to put a pause on the Steep Slopes Ordinance
280 discussion.

281

282 Additionally, Mr. Viel recalled that the Board had discussed adding Roadway Setbacks to Article
283 II of the *Zoning Ordinance*. They had discussed at the last meeting that the new language would
284 state, “a new road shall be placed a minimum of fifty (50) feet from any property line”.

285

286 ***Mr. MacKinnon made the motion to add, “a new road shall be placed a minimum of fifty (50)***
287 ***feet from any property line” to Article II Section C of the Zoning Ordinance. The motion was***
288 ***seconded by Ms. Andersen. The motion was unanimously approved by a vote of 7-0-0.***

289

290 Mr. Viel noted that the Board had discussed adding a twenty-five (25) foot no disturb vegetative
291 buffer for wetlands, subject to a Conditional Use Permit, in Article III Section B of the *Zoning*
292 *Ordinances*. He noted that there is no explicit vegetative buffer for wetland protection at this
293 time.

294

295 ***Mr. MacKinnon made the motion to notice for the January 11, 2023 meeting at 7:00PM the***
296 ***addition of a fourth subsection under Article III Section B stating that there shall be a twenty-***
297 ***five (25) foot no-disturb vegetative buffer around wetlands as defined by a certified wetlands***
298 ***scientist. This vegetative buffer is eligible for a Conditional Use Permit. The motion was***
299 ***seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.***

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Mylar – SUB 0013 Gile Rd

Mr. Viel reminded the Board that a Mylar (plans to be filed at the Registry of Deeds) is ready for signatures. The conditions of approval for this project have already been met, but something had been spilled on the original Mylar before it was sent to the Registry of Deeds, so a new one needs to be signed.

The second pending Mylar cannot be signed as yet, as there is one final condition still to be met.

Public Comment

None.

Approval of Minutes

Ms. Andersen made the motion to approve the minutes of September 28, 2022, October 5, 2022, October 12, 2022, October 26, 2022, November 9, 2022 as amended, and November 16, 2022. The motion was seconded by Ms. Mooney. The motion was unanimously approved by a vote of 7-0-0.

Approval of 2023 Calendar

Ms. Andersen made the motion to approve the 2023 calendar with the edit being that the March 22, 2023 meeting is marked as no business/election of officers. The motion was seconded by Mr. Anderson. The motion was unanimously approved by a vote of 7-0-0.

Select Board and Staff / Board Member Updates

Ms. Jones reported that the first CIP meeting will be held tomorrow, December 15, at 6:30PM. She plans to attend, as does the Chair of the Budget Committee.

Mr. Davies had no update.

Mr. Anderson reported that the Facility Advisory Committee continues to recommend facility maintenance.

Mr. Morin announced that the Select Board is currently interviewing candidates for the Town Administrator position; the Board has narrowed the budget for the Budget Committee down; they are currently sitting at a 5% tax cap, down from 7%, but more needs to be cut to reach the 4% cap set by recent town vote. He further advised that the Town Hall currently needs a lot of repairs. He noted that tax bills recently went out to residents.

Mr. MacKinnon had no update.

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345 Mr. Viel stated that he would like to hold a “process and procedures” meeting after the beginning
346 of the new year with the new Land Use Clerk and Board so that all policies and procedures are
347 clear and agreed upon. Mr. Morin advised that the Planning Board think about updating the
348 Master Plan next year.

349

350 Ms. Mooney had no update.

351

352 Ms. Andersen advised that she recently read a draft of a housing study conducted by SRPC and
353 recommended that others take a look at it. Mr. Haney advised that the final draft of this study
354 should be completed in another month or so.

355

356 Mr. Haney had no update.

357

358 **Adjourn**

359

360 *Mr. Viel made the motion to adjourn.*

361

362 The meeting was adjourned at 9:30PM.

363

364

365

366

367

368 Respectfully submitted,

369 Rachel Dallaire, Transcriber