



TOWN OF NOTTINGHAM

139 Stage Road, P.O. Box 114, Nottingham, NH 03290
www.nottingham-nh.gov

Planning & Zoning
Tel (603) 679-9597 Fax (603) 679-1013

APPLICATION FOR A VARIANCE

To: Zoning Board of Adjustment
Town of Nottingham

FOR OFFICE USE ONLY

Case No. _____
Date Filed _____
Meeting Date _____
Fee Amount _____
Date Paid _____
Outcome _____

Name of Applicant Gary M. Potavin

Mailing Address 6 Tuckaway Shores Rd, Nottingham

Home Phone _____ Work Phone _____ Cell _____

Name of Owner(s) same
(if same as applicant, write "same")

Owner's Address same
(if same as applicant, write "same")

PROPERTY INFORMATION

Location of property 6 Tuckaway Shores Rd Tax Map 70 Lot 32

Lot Dimensions: Front 115' +/- Rear 72' +/- Side 155' +/- Side 204' +/-

Lot Area: Acres .37 +/- Square Feet 16,117 +/-

Present Use of Property Single Family Residence

Proposed Use of Property same - proposed addition

NOTE: This application is not acceptable unless all statements following have been completed. Additional information may be supplied on a separate sheet if needed.

VARIANCE REQUEST

A variance is requested from Article III Section B.2 of the zoning ordinance to permit:
an addition with reduced wetland setbacks

SUPPORTING INFORMATION

1. Granting the variance would not be contrary to the public interest because:

See attached

2. If the Variance were granted, the spirit of the ordinance would be observed because:

See attached

3. Granting the variance would do substantial justice because:

See attached

4. If the variance is granted, the values of the surrounding properties would not be diminished because:

See attached

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

See attached

-AND-


ii. The proposed use is a reasonable one because:

See attached

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

N/A

I hereby certify that I am the owner in fee or the authorized agent of the owner in fee of the property upon which this variance is sought and that all information provided by me is true under penalty of law.



Signature of Owner or Authorized Agent

September 12, 2016

Date

Please Print Name John L. Arnold, Attorney for Gary M. Potavin

NARRATIVE IN SUPPORT OF VARIANCE APPLICATION
OF GARY POTAVIN

This variance application, submitted by Gary Potavin, is related to property located at 6 Tuckaway Shores Road (the "Property").

The modest home on the Property was constructed in 1960. It is a single-story home with an unfinished basement and finished attic. The footprint measures 32' x 27', including an enclosed porch. The Potavins have owned the Property for nearly a decade, and have used it as a seasonal/vacation home. Recently, they sold their primary home in Goffstown and moved to the Property full time. In connection with that move, they have been working on various updates to make the home suitable for a full time residence for their family. Currently, they seek to construct an addition to the home, consisting of an attached garage with additional living space above it. The addition will provide necessary living space for the family, while also allowing covered parking for their vehicles. It will be both attractive and utilitarian, making the home an updated, year-round residence.

The Property is a very small lot, consisting of only .37 acres, on the shore of Pawtuckaway Lake. It is zoned Residential-Agricultural. The size and shape of the Property severely limit the buildable area, when property line and shoreline setbacks are taken into account. A small wetland in the westerly corner of the lot further limits the Property. The wetland is located primarily on the adjacent property known as 9 Meindl Road East (Map 70, Lot 94), and extends from the westerly corner of the Property to the south and west. The wetland collects runoff and has some standing water during the early spring, but is otherwise relatively dry. The edge of the wetland closest to the building envelope is irregularly shaped and protrudes into the lot, which, when combined with the 50-foot wetland buffer, makes the setback line vary widely and cut deeply into the buildable area on the lot.

Given these constraints, the only possible location for an addition is to the rear of the house, closest to Tuckaway Shores Road. The addition has been carefully designed by a professional architect, with input from a wetlands scientist, to comply with all lot line setbacks, and to be visually appealing from the road and the Lake.¹ However, the addition would encroach into the required setback from the wetland. Specifically, Article III, Section B, Paragraph 2 mandates that no structure be built within 50' of any poorly drained hydric B soils and 75' from any very poorly drained hydric A soils. The shortest distance between the proposed addition and the wetland is approximately 13 feet to the poorly drained soil. As such, a variance from Article III, Section B, Paragraph 2 is required.

DISCUSSION

Pursuant to RSA 674:33, I(b), the Zoning Board of Adjustment has the power to authorize a variance from the terms of the zoning ordinance, if:

- (1) The variance will not be contrary to the public interest;

¹ Mr. Potavin has also submitted an application for a Special Exception from the front lot line setback for the location of his replacement septic system.

- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Under the last provision, “unnecessary hardship” means either:

(A) Owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one; or

(B) If, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Here, the variance requested by Mr. Potavin satisfies the statutory requirements.

1. The variance will not be contrary to the public interest.

A variance is contrary to the public interest if “it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance’s basic zoning objectives.” Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id.

Here, allowing the addition within the wetland setback will not violate the Ordinance’s basic zoning objectives. Specifically, the addition would not threaten public safety, health or welfare in any way. The wetland itself will not be disrupted by the construction, and the septic system will be located on the other side of the Property, well outside of the required wetland setback. Attached hereto is a letter from Roscoe Blaisdell, a professional wetlands scientist, which concludes that the reduced building setback will cause no harm to the wetland.

Nor will the essential character of the locality be affected. A substantial vegetated area will remain between the Property and neighboring homes. Furthermore, this Board previously granted a variance to allow the adjacent landowner (9 Meindl Road East) to encroach into the wetland buffer for the construction of a septic system when building the house. Upon information and belief, that encroachment has existed for nearly 10 years without any detriment to the wetland.

The location of the addition is the only area into which the home could be expanded. It cannot be expanded closer to the lake due to lot line and shorefront setbacks (State and Local). Nor can it be meaningfully expanded on either side, given the limited distances to the lot line setbacks. Consequently, although the addition will extend into the wetland setback, it is the most

feasible location for the expansion with the least impact on the neighbors and the environment. It is also worth noting that the addition will increase the tax base for the Town, which further serves the public interest.

2. The spirit of the ordinance is observed.

The Supreme Court has determined that the requirement that a variance not be contrary to the public interest “is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance.” Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). “The public interest is protected by standards which prohibit the granting of a variance inconsistent with the purpose and intent of the ordinance, which require that variances be consistent with the spirit of the ordinance, or which permit only variances that are in the public interest.” Id. As such, this criterion overlaps with the public interest requirement. For the reasons discussed above, allowing the addition within the wetland setback would observe the spirit of the ordinance.

3. Substantial justice is done.

Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). That is the case here.

Allowing the proposed addition would cause no harm to the general public. The wetland at issue is relatively small and is located primarily on the adjacent lot. It is not categorized as “critical wetland,” and is dry most of the year. The proposed addition will not disturb the wetland itself, but will merely extend into the 50’ setback from it. As noted above, this was allowed for the construction on the adjacent property and there has been no known harm to the general public as a result. By contrast, the benefit of the variance to the Potavins is substantial. Without it, they would be unable to construct their addition or update the property to make it more suitable as a full time residence. Indeed, maintaining the wetland setback and lot line setbacks would severely limit any further construction on the Property. For these reasons, substantial justice would be done by granting the variance.

4. The value of surrounding properties is not diminished.

Granting the variance will not diminish surrounding property values. This addition complies with all lot line setbacks, and dramatically improves the appearance and utility of the Property. The addition is consistent with more recent construction in the area and will likely enhance the neighborhood.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because, owing to special conditions of the property that distinguish it from other properties in the area:

- a. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

The Property is unique in that it is a small shorefront lot with an irregular shape and a wetland extending into one corner. These conditions severely limit the buildable envelope on the Property. The general public purpose of the wetland setback is to protect sensitive ecological areas to preserve natural habitat and provide adequate infiltration of storm water. Allowing the addition to encroach into the 50' wetland setback will not interfere with that purpose. As set forth in the attached letter from Mr. Blaisdell, the border of the wetland is very irregular, creating a narrow "finger" extending closest to the addition, and resulting in a buffer that substantially protrudes into the Property and creates the smallest setback. However, that "finger" of wetland comprises a very small area of land, and is of relatively low ecological value. If that irregular "finger" is disregarded, the setback is more like 20 feet. As set forth in Mr. Blaisdell's letter, that distance is sufficient to adequately protect the flora and fauna in the wetland, and to allow the wetland to serve its function of collecting and treating runoff before draining into the Lake.

- b. *The proposed use is reasonable.*

The proposed addition is a reasonable use of the Property. The additional living space and enclosed garage are consistent with other houses in the area, and are reasonable upgrades to make the home a more suitable year-round residence. The addition has been designed to avoid encroaching into lot line setbacks, or extending the building any closer to the Lake, in order to preserve views and minimize impacts on neighbors. The encroachment into the wetland setback has been minimized such that no adverse impacts to the wetland are expected, and the variance request is consistent with relief granted to abutting property.

BLAISDELL SURVEY, LLC
Roscoe T. Blaisdell, LLS

22 Scribner Road

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Raymond, NH 03077

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September 6, 2016

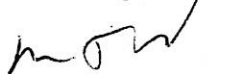
Nottingham Zoning Board of Adjustment

Re: Gary Potavin
6 Tuckaway Shores
Nottingham, NH 03290

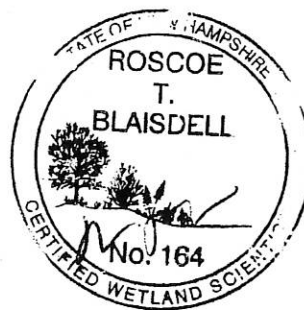
Dear Chairman Russo and Members of the Board:

I am writing this letter in connection with the variance application submitted by Gary Potavin regarding the above referenced property. Mr. Potavin is seeking a variance to allow a reduced wetland setback for a garage project. I have delineated and located the wetlands and made a plan. The wetland is irregularly shaped and there is a spot where a finger of the poorly drained wetland juts 13.46' towards the proposed garage. If this finger were not there the wetland would be around 20' from the proposed garage. Although it qualifies as a wetland, in my opinion it is of low functionality for flora and fauna. It is mostly an area of shaded ground with no plant growth due to the large hemlocks above. To protect the wetland from runoff while the ground is disturbed from your garage project, a silt fence will be installed. If the project is done properly, there should be no adverse impact from this projects reduced setback to the wetland.

Sincerely,



Roscoe Blaisdell, LLS



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P.O. Box 114
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Nottingham NH 03290



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OWNER'S AUTHORIZATION FOR REPRESENTATION

I, the undersigned owner of the property at 6 Tuckaway Shores Rd
hereby verify that I have authorized Hinckley, Allen & Snyder, LLP to
represent me/us and apply for the required approval(s) from the Zoning Board in the Town of
Nottingham, New Hampshire for the following:

- Subdivision/Lot Line Adjustment Site Plan Review
 Backlot Subdivision Design Review
 Other Variance & Special Exception

FOR: _____

NAME OF OWNER (Typed or printed) Gary M. Potavin

Address of Owner 6 Tuckaway Shores Rd

Signature of Owner  Date 9/6/16

NAME OF OWNER (Typed or printed) _____

Address of Owner _____

Signature of Owner _____ Date _____

NAME OF OWNER (Typed or printed) _____

Address of Owner _____

Signature of Owner _____ Date _____

NAME OF OWNER (Typed or printed) _____

Address of Owner _____

Signature of Owner _____ Date _____