

Franklin Associates, LLC
143 Raymond Road, Unit 4, Candia, New Hampshire 03034
New Hampshire ~ Massachusetts ~ Connecticut

Town of Nottingham
Code Enforcement
Nottingham Town Office
139 Stage Road,
PO Box 114
Nottingham, NH 03290

12/1/19

Regarding lands of Kevin Bassett (70-25 LLC), Leslie & Barbara Thompson, Michael Dougherty Rev. Trust, Mark & Michele Lefebvre, Matthew & Seonaid Eaton

Administrative Appeal

The Applicants contend the administrative decision requiring a variance to increase the size of existing, non-conforming lots, is in error. The Applicants seek to acquire segments or a large parcel of land to increase the size of their existing lakeside lots. The intent is not to create independent lots as all land parcels created by subdivision and/or lot line adjustment will be consolidated with the existing lots. The Applicants are receptive to a condition of planning board approval that requires immediate consolidation of the parcels created to enhance the existing non-conforming lots. The error appears to arise from confusion about the intended process and a perceived intermediate step where the parcels will exist independently for a period of time. There is no intermediate step. The Plan to be approved by the Planning Board will require consolidation. There also appears to be a conflict between non-conforming uses and non-conforming lots. Non-conforming uses can be expanded within reason without further variance as a matter of state law which trumps any local ordinance. If a structural addition is made to an existing non-conforming building that increases the non-conformity, a new variance is required. In this case, the process will improve the status of each of the non-conforming lots as they are non-conforming due to size. The process will increase the size and not the non-conformity. The Applicants contend a variance is not required. The Applicant respectfully requests that the Zoning Board of Adjustment (“ZBA”) find a variance is not required and reverse the decision of the Administrative Official.

Continued on next page

Land Surveyors & Septic System Designers

JEFLS@comcast.net jeffranklin@metrocast.net
603-483-3096 or 603-860-0016
www.JEFLS.com

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Bartlett Review

Pursuant to the standard developed by the New Hampshire Supreme Court, the Applicant's request a "Bartlett" review at the start of the hearing to make findings why a variance is needed. Bartlett v. Brookside Church, 164 N.H. 634 (2013). The Applicants contend a variance or variances are not required as the proposed subdivision/lot line adjustment and consolidation diminishes the non-conformities of the existing lots. The Applicants seek to acquire segments or a large parcel of land to increase the size of their existing lakeside homes. The intent is not create independent lots as all land parcels created by subdivision and/or lot line adjustment will be consolidated with the existing lots. The Applicants are receptive to a condition of planning board approval that requires immediate consolidation or the parcels created to enhance the existing non-conforming lots. The error appears to arise from confusion about the intended process and a perceived intermediate step where the parcels will exist independently for a period of time. There is no intermediate step. The Plan to be approved by the Planning Board will require consolidation. There also appears to be a conflict between non-conforming uses and non-conforming lots. Non-conforming uses can be expanded within reason without further variance as a matter of state law which trumps any local ordinance. If a structural addition is made to an existing non-conforming building that increases the non-conformity, a new variance is required. In this case, the process will improve the status of each of the non-conforming lots as they are non-conforming due to size. The process will increase the size and not the non-conformity. The Applicants contend a variance is not required. The Applicant respectfully requests that the Zoning Board of Adjustment ("ZBA") find a variance is not required.

Sincerely,

James E Franklin

James E Franklin, Surveyor

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JEFLS@comcast.net jeffranklin@metrocast.net

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