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November 23, 2020

Bonnie MacKinnon, Chair
Zoning Board of Adjustment
Town of Nottingham
139 Stage Road
Nottingham, NH 03290

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

Re: Map 40, Lot 1, Gile Road (the "Property")
Application for Variance

Dear Chair MacKinnon and Board Members:

Enclosed please find an original and six (6) copies of Application for Variance together with the supporting materials. Also enclosed is a check in the amount of \$325.00 for filing fees. The Applicant proposes a seven (7) lot subdivision of the Property which requires less than 3,000 sq. ft. of wetland impacts to accommodate crossings to access to several lots.

We respectfully request that this matter be placed on the Board's December meeting agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures
cc: Joseph Falzone
Beals Associates
Gove Environmental

S:\GA-GL\Gile Road - Office Account, LLC\ZBA\2020 11 23 ZBA letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253



TOWN OF NOTTINGHAM

139 Stage Road, P.O. Box 114, Nottingham, NH 03290 - email: plan_zone@nottingham-nh.gov Tel (603) 679-9597 Fax (603) 679-1013

Zoning Board of Adjustment Application for Appeal- VARIANCE

PLEASE READ THE APPLICATION RULES AND GUIDELINES BEFORE COMPLETING THE APPLICATION

LOCATION OF PROPERTY: Street Address Gile Road
Tax Map 40 Lot 1 Sub-Lot _____

Applicant's information:

Name(s): <u>Joseph Falzone</u>	
Address: <u>7B Emery Lane, Stratham, NH 03885</u>	Phone #: <u>603-772-9400</u>
E-mail: <u>jfalzone@weinvestinland.com</u>	

Owner(s) information (if same as applicant write same):

Name(s): <u>Diane Monti</u>	
Address: <u>200 S. Banana River Boulevard #2407</u> <u>Cocoa Beach, FL 32932</u>	Phone #: _____ E-mail: _____

Representative's information (if applicable):

Name(s): <u>Justin L. Pasay, Esq., Donahue, Tucker & Ciandella</u>	
Address: <u>111 Maplewood Avenue</u> <u>Portsmouth, NH 03801</u>	Phone #: <u>603-766-1686</u> E-mail: <u>jpasay@dtclawyers.com</u>

Property information:


Lot Dimensions: Front 1880' Rear 3487' Side East 904' Side West 120'
 Lot Area: Acres 61.50 acres Square Feet 2,678,940 sf
 Present Use of Property vacant
 Proposed Use of Property 7 Lot Subdivision

Please provide a copy of the recent deed and tax card for this property.

The signer shall be the owner; or the signer shall provide a letter signed by all the property owners giving the signer permission to represent the owner in presentation of this application.

I certify that the information provided is to the best of my knowledge, complete and correct.

OWNER(S)

_____	_____	_____
Printed name	Signature	Date
<u>Justin L. Pasay, Esq.</u>		<u>Nov. 23, 2020</u>
_____	_____	_____
Printed name	Signature	Date
_____	_____	_____
Printed name	Signature	Date

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,4 of the zoning ordinance to permit:
wetland crossing on approximately 3,000 square feet to access Lots 2, 4, 5 and 6

Previous Zoning Board action on this property: _____

none

SUPPORTING INFORMATION

1. The variance would not be contrary to the public interest because:
see attached

2. The spirit of the ordinance is observed:
see attached

3. Substantial justice is done:
see attached

4. The values of the surrounding properties are not diminished:
see attached

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

A. For purposes of this subparagraph, "unnecessary hardship" means that, 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
see attached

ii) The proposed use is a reasonable one.
see attached

B. 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.
see attached

I understand that I **MUST** appear in person at the public hearing

OR

If I cannot appear in person,

I will designate the representative or agent, in writing below, to act on my behalf:

I hereby designate Justin L. Pasay, Esq.

to represent me as a representative/agent in the pursuance of this appeal.

see enclosed authorizations

Property Owner(s) _____
Signature Date Signature Date

Property Owner(s) _____
Signature Date Signature Date

Property Owner(s) _____
Signature Date Signature Date

Property Owner(s) _____
Signature Date Signature Date

LIST OF ABUTTERS

The following is a list of all abutting property owners concerned in this appeal. An abutter is any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. The Land Use Office can assist you in determining your abutters, but **YOU ARE RESPONSIBLE FOR OBTAINING THE CORRECT OWNER AND MAILING INFORMATION.** When verifying the correct owner and mailing information, you are required to use the assessing information. **You are ultimately responsible for your own list of abutters.** This information is necessary to properly notify all interested parties with certified notices. **FAILURE TO PROVIDE COMPLETE INFORMATION ON ABUTTERS WILL RESULT IN THE APPLICATION BEING RETURNED AND MAY DELAY THE SCHEDULING OF YOUR HEARING.**

****PRINT THREE ADDRESS LABELS PER ABUTTER
INCLUDING THE APPLICANT, OWNER & PROFESSIONAL(S) ****

1. Applicant(s) Name see enclosed abutter list and labels	Address
2. Owner Name	Address
3. Professional(s) Name	Address

MAP/ LOT/ SUB-LOT	ABUTTER(S) NAME	MAILING ADDRESS
4.		
5.		
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TOWN OF NOTTINGHAM


ZONING BOARD OF ADJUSTMENT

139 Stage Road, P.O. Box 114, Nottingham, NH 03290 - email: plan.zone@nottingham-nh.gov Tel (603) 679-9597 Fax (603) 679-1013

AUTHORIZATION TO ENTER UPON SUBJECT PROPERTY

The property owner(s), by the filing of this application, hereby give permission for the members of the Nottingham Planning Board and such agents or employees of the Town as the Nottingham Planning Board may authorize, to enter upon the property which is the subject of this application at any reasonable time for the purpose of such examinations, surveys, tests and/or inspections as may be appropriate to enable this application to be processed.

I/We hereby waive and release any claim or right I/we may now or hereafter possess against any of the above individuals as a result of any examinations, surveys, tests and/or inspections conducted on my/our property in connection with this application. This authorization expires in one year from date of signature

Property Owner(s)		11/23/2020	
	_____ Signature	_____ Date	_____ Signature
			_____ Date

Property Owner(s)	_____ Signature	_____ Date	_____ Signature
			_____ Date

Property Owner(s)	_____ Signature	_____ Date	_____ Signature
			_____ Date

Property Owner(s)	_____ Signature	_____ Date	_____ Signature
			_____ Date

VARIANCE APPLICATION FOR
JOSEPH FALZONE (the “Applicant”)

The Applicant requests a variance from Article III, Section B(4) of the Zoning Ordinance to accomplish a proposed seven-lot subdivision on property on Gile Road identified Town Tax Map 40, Lot 1 (the “Property”), to include approximately 2,990 s.f. of wetlands impact caused by three crossings that will be used to access proposed lots 2, 3, 4, 5 and 6, where wetland impacts of this nature are prohibited by Article III, Section B(4) of the Zoning Ordinance.

A. Introduction

The Property is 61.5 acres in size and situated in the western portion of Nottingham within the Town’s Residential – Agricultural Zoning District (the “R/A District”), where single family residential development is permitted by right. In the R/A District, the minimum lot size is 2 acres, the minimum frontage is 200’, and the minimum open space requirement is 60%. The building setbacks are 50’ (front), 50’ (side & rear), 50’ (poorly drained soils), 75’ (very poorly drained soils), and 75’ (leach field setbacks). The Property is surrounded to the southwest and northwest by single-family residential properties and to the northeast by a large unimproved 101-acre tract identified as Town Tax Map 25, Lot 18.

By way of brief background, the Applicant has been actively pursuing subdivision of the Property since January of 2019. In that month, the Applicant filed a proposed 18-lot design for both a cluster and conventional subdivision of the Property with a proposed new subdivision road for design review with the Planning Board. That proposal was not well-received by the public or the Planning Board due to the number of proposed new homes and the perceived traffic impact, among other things.

Recently, the Applicant presented a 14-lot conventional subdivision design, depicted in **Enclosure 1**, and a seven-lot conventional subdivision design, depicted in **Enclosure 2**, to the Planning Board and the Conservation Commission. The 14-lot design would necessitate a new subdivision road but would create no wetland impact and require no relief from the Zoning Board of Adjustment. In the alternative, the seven-lot plan proposes lots with frontage along Gile Road and no new subdivision road. See Enclosure 2. Five driveways would be utilized to access the seven lots as proposed lots 2 and 3, and 4 and 5, are accessed via shared driveways. However, those two shared driveways, and the proposed driveway for Lot 6, require wetland crossings to access the upland buildable areas on those lots. **Enclosure 2**. More specifically, the Lot 2/3 shared drive would create a +/- 450 s.f. wetland impact, the shared driveway for Lots 3/4 would create a +/- 970 s.f. wetland impact, and the driveway for Lot 6 would create a +/- 1,570 s.f. wetland impact (collectively, the “Wetland Impacts”). Wetland impacts of this nature are prohibited by the Town’s Wetland Conservation Areas. Zoning Ordinance, Article III, Section B(4). To offset these impacts, the Applicant proposes to utilize “eco-passages” for each of the wetland crossings as depicted and described in **Enclosure 3**. These eco-passages are specialized wildlife tunnels which maintain continuity of wetland areas. See Enclosure 3.

On October 19 of this year, the Applicant presented his two potential designs for the Property to the Town’s Conservation Commission. After discussion, the Conservation

Commission unanimously endorsed the seven-lot plan, as well as the Applicant's commitment to using "ecopassages" at the wetland crossing sits and including a deed restriction for Lot 7 that would prevent further subdivision of same. See Enclosure 4.

On October 28, the Applicant presented his two potential designs for the Property to the Planning Board. After review and discussion, the Planning Board conducted a straw-poll and unanimously voted to support the seven-lot design. The Planning Board's preference for the seven-lot proposal was rooted in a lack of substantial wetland impact, less road infrastructure, and less potential noise than the 14-lot concept. On the contrary, the Planning Board felt that the 14-lot plan would cause problems with enforcement regarding wetland impacts by homeowners and would have a higher impact on Town services. Similarly, the vast majority of abutters who attended the hearings preferred the seven-lot plan.

In light of the Conservation Commission and Planning Board comments, the Applicant has decided to pursue the seven-lot design and seeks a variance from Article III, Section B(4) as described with regard to the proposed 2,990 s.f. of Wetlands Impacts, as described below. The caveat is that should this requested variance relief be denied, the Applicant will pursue the 14-lot plan, which is why this application frequently compares and contrasts the two plans.

Because the Applicant's proposal would not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the general intent of the Zoning Ordinance and the implied intent of the Wetlands Conservation Area ordinance and its application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that these variances be granted.

B. Variance Criteria

Pursuant to RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (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, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: 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 the Proposed use is a reasonable one; or 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. *See* RSA 674:33, I (b).

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

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club v. Town of

Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. *See also* Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The general purposes of the Zoning Ordinance are to protect the public health, safety, convenience and welfare of the residents of Nottingham, to preserve the Town’s rural character, to insure the land use is consistent with the capability of the land to support such use with regard to ecological and aesthetic consideration and to ensure that land use does not have a deleterious effect on other property. *See* Zoning Ordinance, Article I, Section (B). While there is no express purpose section for Article III, Section B, regulating the Town’s Wetland Conservation Areas, the general intent of these regulations is to protect environmentally sensitive wetland and wildlife areas.

Here, the Wetland Impacts are only related to crossing which will provide access to the Property’s uplands, not site development, and they will be mitigated by eco-passages which will preserve wetland function and value by protecting wetland continuity and access for wildlife. Further, the Wetland Impacts will facilitate the creation of a seven-lot subdivision, which will avoid the creation of a 14-lot subdivision with significantly more impervious surface, new residences, and additional density. In this sense, the seven-lot proposal is consistent with the stated public purposes of the Zoning Ordinance and the implied purposes of the Wetlands Conservation Areas ordinance as unanimously found by both the Conservation Commission and Planning Board because this proposal:

- Protects the public health, safety and welfare by providing reasonable access to the upland areas of the Property for a reasonable number of new residences which will advance the Applicant’s real property rights;
- Preserves the Gile Road and the Town’s rural character by developing only seven lots where 14 would be permitted by right, which lots will be significantly larger in size than the required 2-acre minimum requirement and most of the residential properties in the area;
- Voluntarily restricts future subdivision and development of the large, 35.36 acre Lot 7;
- Insures the land use is consistent with the capability of the land to support the use by minimizing the development beyond what is permitted by right and permitting Wetland Impacts in a reasonable way, and only insofar as they provide access to uplands;
- Causes no deleterious effect on other property; and
- Acknowledges the sensitivity of the Wetlands Conservation Areas by utilizing eco-passages that will protect the wetlands and preserve access continuity for wildlife.

Based on these realities, the proposed variance will not be contrary to the public interest advanced by the general purposes of the Zoning Ordinance and the implied purposes of the Wetlands Conservation Area ordinance because strictly enforcing the ordinance will not advance its purpose. In other words, the variance will not “unduly” or “in a marked degree” conflict with the ordinance such that it violates the ordinance’s basic zoning objectives, because the Zoning Ordinance’s basic zoning objectives, and the implied objectives of the Wetlands Conservation Areas ordinance, are met by the proposal. See Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691; Harborside Associates, L.P. 162 N.H. at 514.

Beyond this, the proposed variance will not impact the essential character of the area. The Wetland Impacts themselves are being mitigated to the extent it is possible by use of the eco-passages. With respect to the subdivision itself, the seven-lot proposal is precisely in keeping with the character of the neighborhood because the proposed lots are substantially similar to, or larger than, the vast majority of lots in area. More specifically, of the seven lots to the southwest of the Property between the Property and Gile Road, five out of seven are substantially less than 3.5 acres in size. Similarly, of the nine properties to the northwest side of Gile Road before its intersection with McCrillis Road, eight are less than three acres in size, and the one outlier is 3.11 acres in size. The northeast side of Gile Road before its intersection with McCrillis Road contains lots that are similar in size to those proposed by the seven-lot subdivision. Further, the Applicant proposes to voluntarily limit further subdivision of Lot 7 which will help preserve the rural character of the area indefinitely.

Finally, the variance will not threaten the public health or safety because the Wetland Impacts are only providing access to five of the lots, are helping to avoid a 14-lot subdivision which could be developed by right and which would create significantly more impervious surface area and would impact Town resources more than the current proposal, and because the Wetland Impacts are being mitigated to the extent its possible by use of the eco-passages which will protect the wetlands and preserve access continuity for wildlife. The Applicant presumes that is why not only the Conservation Commission and the Planning Board, but also the general public, endorsed the seven-lot proposal over the 14-lot proposal.

Because the seven-lot subdivision proposal advances the general purposes of the Zoning Ordinance and the implied purposes of the Wetlands Conservation Area ordinance, and because the Applicant’s proposal is consistent with the character of the neighborhood and will not threaten the public’s health or safety, granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variance observes the general purposes of the Zoning Ordinance and the implied purposes of the Wetlands Conservation Area ordinance as well as New Hampshire jurisprudence regarding the “public interest” prong of the variance criteria because the proposed Wetlands Impact will facilitate a seven-lot subdivision design which will be consistent with the character of the area and will not threaten the public health, safety, or welfare, which is why this proposal enjoys unanimous support from the Conservation Commission and Planning Board when compared to the 14-lot concept. As the New Hampshire

Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be “contrary to the public interest” is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691.

As discussed above, the requested variance is consistent with the general purposes of the Zoning Ordinance and the implied purposes of the Wetlands Conservation Area ordinance because of the reasons stated in Section 1. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variance requested. First, preservation of the sensitive wetland and wildlife areas by use of the eco-system advances the public interest. Further, the public, by its own statements at the underlying Conservation Commission and Planning Board meetings, will be aggrieved by the denial of the requested variance because it will lead to the development of the Property with the 14-lot design, which the public has rejected. Moreover, development of the 14-lot concept will, as the Planning Board noted, lead to potential enforcement issues with individual property owners impacting wetlands, and will cause more of a demand on Town services and infrastructure, which, while permitted by right, may be contrary to the desires of the public and abutters.

On the contrary, the requested variance will facilitate the more conservative seven-lot subdivision of the land in a manner that is environmentally sensitive and reasonable. This outcome will not only benefit the Applicant, who desires to exercise his reasonable real property rights, but the public and abutters, as they have expressly stated.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the neighborhood as described above, none of the surrounding properties will suffer any diminution in value. First, the Wetland Impacts will not have any impact on surrounding properties. Beyond this, and as depicted in **Enclosure 2**, the upland areas within which the single-family residences will be built on each of the seven lots are in the northeast portion of each lot. These areas are closest in proximity to Tax Map 25, Lot 18, which is a large undeveloped lot. Further, the proposed residences will be difficult to discern from the road. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, 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 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.

The “special conditions” of the Property for purposes of this variance criterion include its large size, the location of the uplands on the Property, and the location of the wetlands on the Property. More specifically, there are wetlands in close proximity to Gile Road which make subdivision of the Property to accommodate lots with frontage along Gile Road, an impossibility without variance relief from Article III, Section B(4). Rather, by virtue of the upland areas on the central and eastern/northeastern areas of the Property, the only way to avoid all wetland impacts is to create a new subdivision road off of Gile Road to access the upland area, which is depicted in the 14-lot plan, which plan has been reviewed by the Conservation Commission, Planning Board and general public and is disfavored by same. See Enclosure 1.

Here, there is no fair and substantial relationship between the general public purposes of the ordinance, which are to preserve the Town’s rural character, insure consistent land uses, avoid deleterious effects on other property, and the implied purposes of the Wetlands Conservation Areas ordinance, which are to protect environmentally sensitive wetland and wildlife areas, and their specific application to the Property because strict enforcement of Section

III, Article B(4) will lead to the Applicant's development of a by-right 14-lot subdivision which will have considerably more impervious surface area, twice as many residential homes, and will create more of a demand on the Town's services. Moreover, the Applicant's use of the eco-passages and the restriction on future development of Lot 7 further mitigates the impact caused by the seven-lot proposal.

In other words, strictly enforcing the terms of Article III, Section (4) will *not* advance the general purposes of the Zoning Ordinance, or the specific implied purposes of Article III, Section B(4).

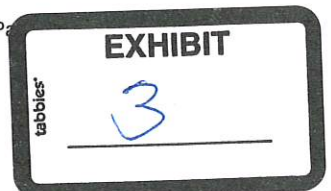
Finally, the proposed use is reasonable. As noted above, the seven-proposed lots will be consistent with, if not substantially larger than most residential properties in the area and the residences to be developed on same will barely be discernable from Gile Road. This use is consistent with the underlying Zoning District and consistent with the underlying area of Nottingham.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. *See Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007); *see also Harborside Associates*, 162 N.H. at 2011 ("mere conflict with the terms of the ordinance is insufficient").

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

C. Conclusion

The Applicant respectfully submits that all five criteria for the variance as requested have been met such that its Variance Application should be granted.

Parks Canada

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→ [New ecopassages](#)



Bruce Peninsula National Park



New ecopassages to help critters cross the road

Wildlife is benefitting from the installation of ecopassages at Bruce Peninsula National Park.

Eco-passages are specialized wildlife tunnels which allow animals to safely cross busy roads. They are especially important in areas where a road fragments critical habitat and prevents animals from reaching their breeding grounds.

Our scientists have identified seven high priority locations for ecopassages in Bruce Peninsula National Park. These are areas where we've traditionally seen a high number of road deaths or injuries to reptiles and amphibians because of cars, also known as "hotspots".

Animals which try to cross the road in these areas will encounter a specialized fence. Snakes, turtles and small mammals such as rodents are not able to crawl over, or dig under these fences. Instead they are redirected to a tunnel. These tunnels are specially designed to be more attractive to reptiles and amphibians by allowing sunlight through the top so these cold blooded creatures (ectotherms) don't have to go into cold, dark places to get where they are going.

We continue to monitor how well this system works, and so far, results are positive. We have already photographed many different animals using these tunnels and have made improvements to the original design we started using in 2012. We are confident we are on the right path to help at risk species such as snapping turtle, massasauga rattlesnake, eastern ribbon snake and several others.



Next time you visit us at Bruce Peninsula National Park watch for the metal grates on the roads. Those are your sign that we're working hard to help protect the creatures which share this



The fencing leads animals to the opening and each end of the ecopassage.

magnificent place with us.

Specialized fence to direct animals towards the ecopassages



Date modified :
2019-05-18



P.O. BOX 114 TOWN HALL ROUTE 152 NOTTINGHAM, NH 03290

October 20, 2020

To: Nottingham Planning Board

From: Nottingham Conservation Commission

Re: Case #20-005-DR, Tax Map 40, Lot 1

Mr. Grotenhuis and other Members of the Board:

At the Conservation Commission meeting October 19, 2020, Mr. Joseph Falzone, Developer, presented two subdivision designs for Tax Map 40, Lot 1.

One design is for a seven (7) lot subdivision, all lots would front onto Gile Road (East). Lots 1 through 6 would range in size from 2.61 acres to 5.29 acres. Lot 7 would be 35.73 acres. There are three wetland crossings proposed, one for Lot 3 and shared driveways for Lots 4 & 5 and Lots 6 & 7. Total wetland impacts with this seven (7) lot design is approximately 3000 sq. ft. Mr. Falzone would install "ecopassages" at these impact sites to facilitate the passage of wildlife following the wetland system.

<https://www.pc.gc.ca/en/pn-np/on/bruce/nature/conservation/rtr/ecopass> Furthermore, Mr. Falzone will include deed restrictions for Lot 7 that would prevent further subdivision if the abutting lot is to be subdivided in the future.

The second design for fourteen (14) lots would feature a cul-de-sac entering from Gile Road with a single potential wetland impact at the entrance. None of the proposed lots would impact wetlands. Five (5) of the proposed lots would be under 2.10 acres in size. Eight (8) lots would range from 2.62 to 5.29 acres in size. The largest single lot to be located at the end of the cul-de-sac bulb would be 16.42 acres.

Following the presentation there was much discussion among the Commission members and Mr. Falzone. After everyone's concerns and questions were addressed, a poll was taken to determine the Commission's favored proposed subdivision design. All five (5) members were unanimously in favor of the seven (7) lot proposal because it preserved more open space and there would be more overall protection for the wetland complex with fewer houses.

Thank you for the opportunity to review and comment on this proposal on behalf of the town of Nottingham.

Samuel Demeritt, Conservation Commission Chair

A handwritten signature in cursive script that reads "Samuel Demeritt".

(Statutory Form of)

2055 359

WARRANTY DEED:

We, JOHN A. DeMARCHI and MARIE DeMARCHI, brother and sister, as joint tenants with rights of survivorship, of Tewksbury, County of Middlesex, and Commonwealth of Massachusetts,

for consideration paid,

grant to ROMEO DIBERTO and MARY DIBERTO, husband and wife as joint tenants with rights of survivorship, of R. F. D. #1, Newmarket, Rockingham County, N.H.

WITH WARRANTY COVENANTS

A certain parcel of land with the buildings thereon/situated in Nottingham County of Rockingham, and State of New Hampshire, and lying on both sides of the highway leading from McCallis corner, so-called, to Wadleigh's Falls in Lee, bounded and described as follows:

Beginning on the Easterly side of said road leading to Wadleigh's Falls at the Northeastly corner of the premises herein conveyed and at a stone wall; thence S 57° 21' W 120 feet, more or less, to a corner in the stone wall; thence turning and running S 32° 58' E 1975 feet, more or less, by land of Capt. Wayland following said stone wall to a corner in the stone wall; thence continuing S. 32° 58' E. by a stone wall and other land of said Capt. Wayland 1042 feet, more or less to a wire fence at land of the Ben Lang Estate; thence Southerly a short distance to a stone wall; thence turning and running S 32° 20' E. following said stone wall on land of said Lang Estate 470 feet, more or less, to a corner in said stone wall at other land of said Lang Estate; thence turning and running S. 32° 08' W. by a stone wall and by a wire fence by other land of said Lang Estate 924 feet to a stone wall at land of one Walker; thence turning and following said stone wall and land of said Walker and land of Ethel H. Dane, N. 33° 0' W. 1875 feet, more or less, to a stone wall; thence turning and running S 85° 0' W. following said stone wall 104 feet, more or less, to another corner in the stone wall and the Wadleigh's Falls Road; thence crossing said 50 foot roadway and beginning on the opposite side of said road at the graveyard; thence Westerly 43 feet, more or less and thence Southerly 22 feet, more or less around said graveyard to a stone wall at land of Ethel H. Dane; thence following said stone wall and a wire fence by land of said Dane S 85° 0' W. 1060 feet, more or less, to a corner at an old stone wall; thence running N. 26° 0' W. 1352 feet, more or less, following said old stone wall in part and in part by a wire fence by land of said Ethel H. Dane, to a corner at the beginning of another stone wall; thence turning and running N. 50° E. following said stone wall and land formerly of one Kelsey 1077 feet, more or less, to a point at a wire fence at land of Shumate; thence continuing in the same line following said wire fence by said Shumate land 560 feet, more or less, to a point at land of George Allison; thence turning and running S 34° E, 132 feet, more or less by land of George Allison to a stone wall; thence following a

Feb 18 9 26 AM '71
NOTARY PUBLIC
ROCKINGHAM COUNTY
NEW HAMPSHIRE

Kenneth C. Latham
Attorney At Law
1 Pleasant Street
Reading, Mass. 01867

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curved stone wall in a Southerly direction 460 feet, more or less, to a point; thence turning and running Northerly 78° E. by land of Robert McGowan 300 feet, more or less, to the stone wall at Wadleigh's Falls Road. The point of beginning being on the opposite side of said road slightly Northeast of this particular point.

Being the same premises conveyed to said Grantors by deed of MILDRED G. JONES, widow, dated December 8th, 1962, and duly recorded in Rockingham County Registry of Deeds, Book 1655, Page 477 and 478.

Witness our hands and seals, this 31st day of December, 1970.

Witness:

Kenneth C. Latham
to Both

John A. DeMarchi
John A. DeMarchi

Marie DeMarchi
Marie DeMarchi

COMMONWEALTH OF MASSACHUSETTS:

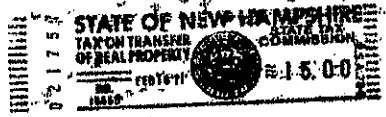
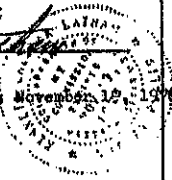
Middlesex, ss.

December 31, 1970.

Then personally appeared John A. DeMarchi and Marie DeMarchi above-named, and acknowledged the foregoing instrument to be their free act and deeds, before me,

Kenneth C. Latham
Notary Public

My Commission Expires November 19, 1974



Kenneth C. Latham
Attorney At Law
1 Pleasant Street
Reading, Mass. 01867

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OWNER INFORMATION **SALES HISTORY** **PICTURE**

MONTI, DIANE Date Book Page Type Price Grantor

200 S BANANA RIVER BLVD #2407

LISTING HISTORY **NOTES**

08/28/18	JOVL	MARKED FOR INSPECTION	VACANT/NICE LEVEL FRONTAGE ON LOT 1 SHDE, MOSTLY WOODED, SOME NICE FIELD; 2/13-LEVEL WITH ROAD; 8/18- LARGE FIELD BEHIND FRONTAGE; WOODED NEAR ST; ADJUST SPL FOR UNMNGD PINE & OTHER TO 90%;
04/05/18	INSP	MARKED FOR INSPECTION	
02/13/13	DMVL		
01/24/13	INSP	MARKED FOR INSPECTION	
09/17/03	VMVL		
08/03/99	BHHC		
10/09/97	ABL		
02/15/87	LM		

EXTRA FEATURES/VALUATION **MUNICIPAL SOFTWARE BY AVIAR**

Feature Type Units Length x Width Size Adj Rate Cond Market Value Notes

TOWN OF NOTTINGHAM
NEW HAMPSHIRE
PARCEL TOTAL TAXABLE VALUE

Year	Building	Features	Land
2018	\$ 0	\$ 0	\$ 5,122
			Parcel Total: \$ 5,122
2019	\$ 0	\$ 0	\$ 4,849
			Parcel Total: \$ 4,849
2020	\$ 0	\$ 0	\$ 5,523
			Parcel Total: \$ 5,523

LAND VALUATION **LAST REVALUATION: 2020**

Zone: R-AG RES/AGR DIST Minimum Acreage: 2.00 Minimum Frontage: 200 Site: UNID/WDS Driveway: UNDEVELOPED Road: PAVED

Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Ad Valorem	SPL	R	Tax Value Notes
FARM LAND	2,000 ac	135,000	F	110	55	100	90	100 - LEVEL	100	73,500	81	Y	538
FARM LAND	8,000 ac	x 2,500	X	80				95 - MILD	100	15,200	81	Y	2,234
UNMNGD PINE	5,000 ac	x 2,500	X	80				90 - ROLLING	100	9,000	90	Y	681
UNMNGD OTHER	46,500 ac	x 2,500	X	80				90 - ROLLING	100	83,700	90	Y	2,050
UNMNGD OTHER	1,600,000 ff	x 60	F	110				90 - ROLLING	100	95,000	0	N	0
											276,400		5,523

PICTURE

OWNER

TAXABLE DISTRICTS

BUILDING DETAILS

MONTI, DIANE

District

Percentage

200 S BANANA RIVER BLVD #2407

COCOA BEACH, FL 32931

PERMITS

Date

Project Type

Notes

Model:

Roof

Ext

Int

Floor:

Heat

Bedrooms:

Baths:

Extra Kitchens:

A/C:

Quality:

Com. Wall:

Stories:

Fixtures:

Fireplaces:

Generators:

Base Type:

BUILDING SUB AREA DETAILS

2020 BASE YEAR BUILDING VALUATION

Year Built

Condition For Age:

Physical:

Functional:

Economic:

Temporary:

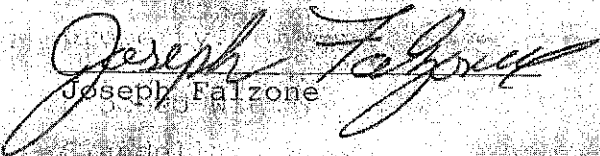
LETTER OF AUTHORIZATION

I, Joseph Falzone, option holder for property depicted on Tax Map 40, Lot 1, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the Town of Nottingham and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property. Joseph Falzone having been previously authorized to proceed with the permitting process by property owner Diane Ciandella, (see attached prior authorization).

Town of Nottingham

Application
Dated: NOV. 17, 2020

By: _____


Joseph Falzone

Notary Public

WITNESSES:

SPICA GIUGILE ROAD - OFFICE ACCOUNT, LLC (ZEA) LETTER OF AUTHORIZATION, DORBY

LETTER OF AUTHORIZATION

I, Diane Monti, owner of 61.5 acres of land located on Gile Road Nottingham NH shown on Nottingham town map #40 as lot 1 do hereby authorize Beal's Associates, PLLC, 70 Portsmouth Avenue, Stratham, NH, and Joseph Falzone of Stratham, NH to act on my behalf in all matters to be discussed at the Planning Board hearings and any other Land Use Board approval hearings or State/Federal Permitting Agencies concerning the property previously mentioned.

I hereby appoint Beal's Associates, PLLC and Joseph Falzone to act on my behalf in the permitting process.

[Signature]
Witness

Diane Monti

1/9/2019

Witness

Date

DIANE MONTI PROPERTY, GILE ROAD, TAX MAP 40, LOT 1
ABUTTER LIST

OWNER:

40/1

Diane Monti
200 S. Banana River Boulevard #2407
Cocoa Beach, FL 32931

APPLICANT:

Joseph Falzone
7B Emery Lane
Stratham, NH 03885

ABUTTERS:

25/18 & 25/18-A

Edward & Suzanne Davis
126 Gile Road
Nottingham, NH 03290

39/11

Richard & Carrie Pascoe
125 Gile Rd. Revocable Trust
125 Gile Road
Nottingham, NH 03290

40/2-1

John Nasser
Nasser Revocable Trust
154 Gile Road
Nottingham, NH 03290

40/2-2

John Butler
152 Gile Road
Nottingham, NH 03290

40/2-3

Richard & Daniel Bacon
Bacon Irrevocable Trust
167 Gile Road
Nottingham, NH 03290

40/2-1B

Sandra Potter
Potter Revocable Trust
156 Gile Road
Nottingham, NH 03290

40/2-1C

Adam & Colleen Rosenthal
162 Gile Road
Nottingham, NH 03290

40/4

Richard & Ann Bacon
167 Gile Road
Nottingham, NH 03290

40/5

Conrad & Kathy Mandsager
174 Gile Road
Nottingham, NH 03290

40/12

Robert Diberto
334 Route 108
Madbury, NH 03820

40/14 (duplicate)

Diane Monti
200 S. Banana River Boulevard #2407
Cocoa Beach, FL 32931

ATTORNEY:

Justin L. Pasay, Esq.
Donahue, Tucker & Ciandella, PLLC
111 Maplewood Avenue
Portsmouth, NH 03801

ENGINEERING:

Beals Associates, PLLC
70 Portsmouth Avenue, 3rd Floor
Stratham, NH 03885

SOIL SCIENTIST:

Gove Environmental
8 Continental Drive, Bldg. 2 Unit H
Exeter, NH 03833

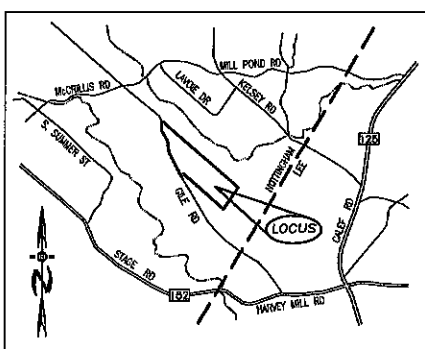
S:\GA-GL\Gile Road - Office Account, LLC\ZBA\2020 11 20 ABUTTERS LIST.docx

PREPARED FOR:
JOSEPH FALZONE
7B EMERY LANE
STRATHAM, N.H. 03885

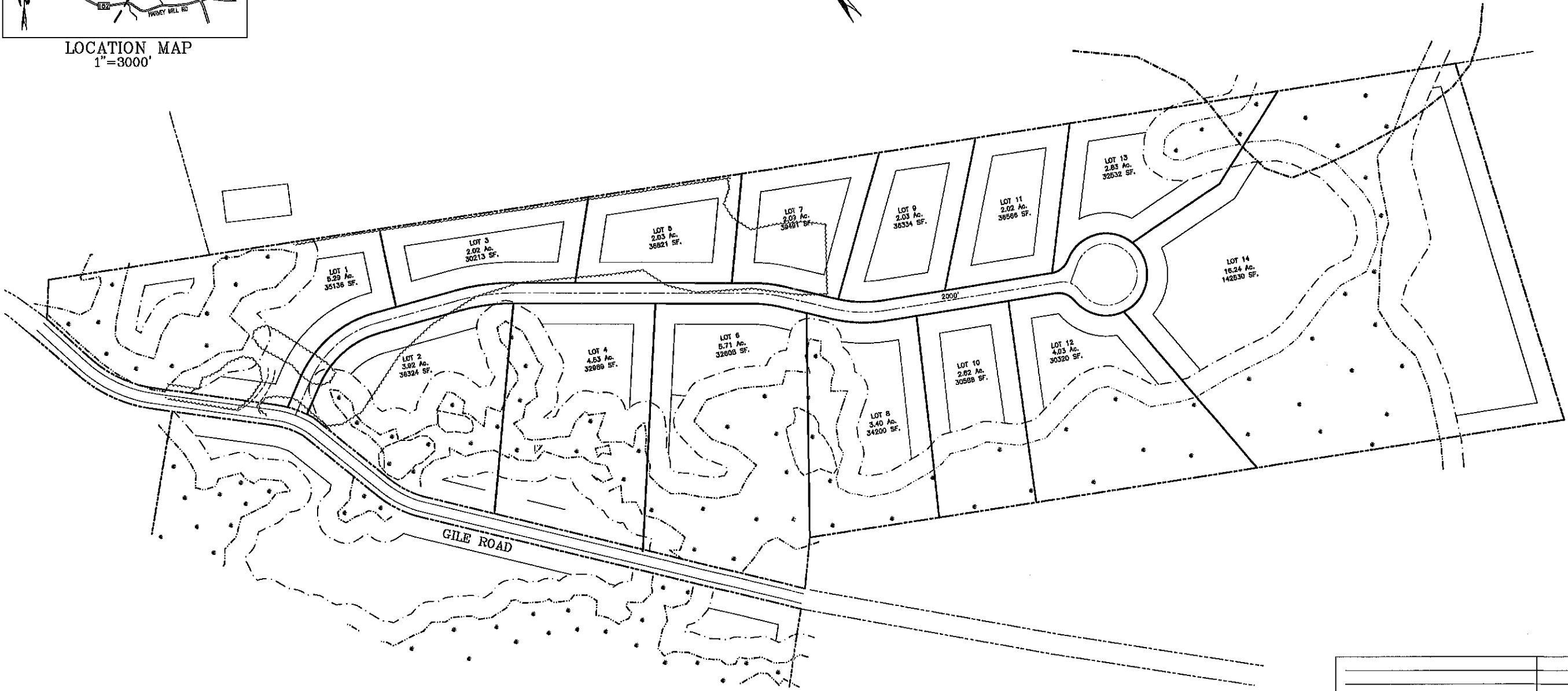
BEALS ASSOCIATES PLLC
70 PORTSMOUTH AVE, STRATHAM, N.H. 03885
PHONE: 603-583-4860, FAX: 603-583-4863

ZONING REQUIREMENTS

ZONE	R/A
LOT AREA MIN.	2 ACRE
MIN. BUILDING AREA	30,000 SF
LOT FRONTAGE	200 FT.
FRONT YARD	80 FT.
SIDE & REAR YARD	80 FT.
WETLAND SETBACK	80 FT. HYDRIC B & 75 FT. HYDRIC A
BUILDING HEIGHT	34 FT.



LOCATION MAP
1" = 3000'



APPROVAL BLOCK

APPROVED TOWN OF NOTTINGHAM PLANNING BOARD

CHAIRPERSON	DATE

REVISIONS:	DATE:
CONVENTIONAL SUBDIVISION	
PLAN FOR: RESIDENTIAL DEVELOPMENT GILE ROAD NOTTINGHAM, NH	
DATE: FEB. 2019	SCALE: 1"=150'
PROJ. NO: NH-1155	SHEET NO. 1 OF 1

PREPARED FOR:

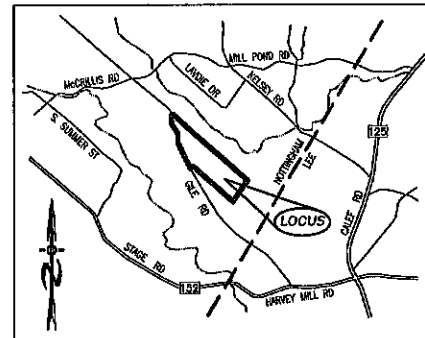
JOSEPH FALZONE
7B EMERY LANE
STRATHAM, N.H. 03885

BEALS ASSOCIATES PLLC

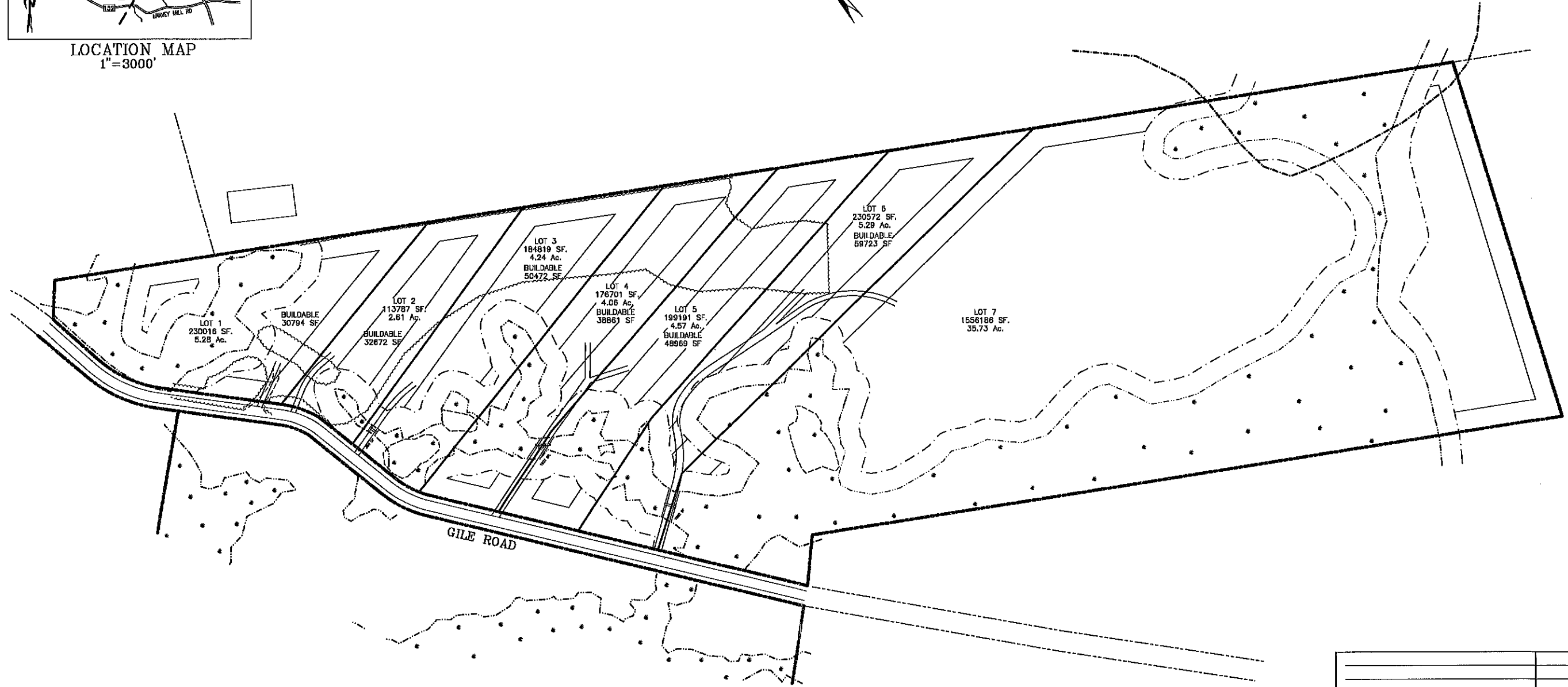
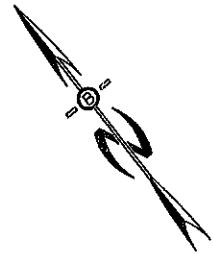
70 PORTSMOUTH AVE, STRATHAM, N.H. 03885
PHONE: 603-583-4860, FAX: 603-583-4863

ZONING REQUIREMENTS

ZONE	R/A
LOT AREA MIN.	2 ACRE
MIN. BUILDING AREA	30,000 SF
LOT FRONTAGE	300 FT.
FRONT YARD	50 FT.
SIDE & REAR YARD	50 FT.
WETLAND SETBACK	50 FT. HYDRIC B & 75 FT. HYDRIC A
BUILDING HEIGHT	34 FT.



LOCATION MAP
1"=3000'

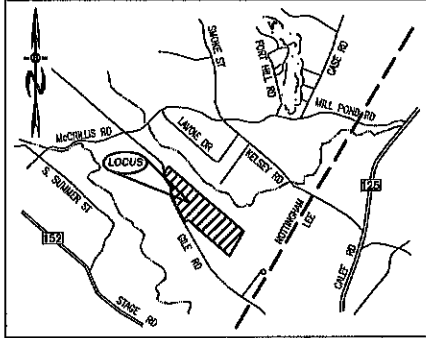


APPROVAL BLOCK

APPROVED TOWN OF NOTTINGHAM PLANNING BOARD

_____	_____
CHAIRPERSON	DATE

REVISIONS:	DATE:
CONVENTIONAL SUBDIVISION	
PLAN FOR: RESIDENTIAL DEVELOPMENT GILE ROAD NOTTINGHAM, NH	
DATE: FEB. 2019	SCALE: 1"=150'
PROJ. NO: NH-1155	SHEET NO. 1 OF 1



LOCATION MAP
1"=3000'

WETLAND NOTES

THE LIMITS OF JURISDICTIONAL WETLANDS AS SHOWN ON THIS PLAN WERE DELINEATED BY GOVE ENVIRONMENTAL SERVICES, INC., IN ACCORDANCE WITH:

1. US ARMY CORPS OF ENGINEERS REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, TECHNICAL REPORT ERDC/EL TR-12-1, JANUARY 2012, VERSION 2.0
2. FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, A GUIDE FOR IDENTIFYING AND DELINEATING HYDRIC SOILS, VERSION 7.0. UNITED STATES DEPARTMENT OF AGRICULTURE (2010).
3. NORTH AMERICAN DIGITAL FLORA: NATIONAL WETLAND PLANT LIST, VERSION 2.2.1 (2009).

NOTES

1. UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN LOCATED FROM FIELD OBSERVATIONS AND THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. BEALS ASSOCIATES OR ANY OF THEIR EMPLOYEES TAKE NO RESPONSIBILITY FOR THE LOCATION OF ANY UNDERGROUND STRUCTURES OR UTILITIES NOT SHOWN, THAT MAY EXIST. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES OR STRUCTURES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE
2. THIS PLAN HAS BEEN PREPARED FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS. THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THE DESIGN PLANS. THIS INCLUDES ANY UNFORESSEEN CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS OF THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED.
3. ALL BENCHMARKS AND TOPOGRAPHY SHOULD BE FIELD VERIFIED BY THE CONTRACTOR.
4. ALL DRAINAGE WORK TO CONFORM TO TOWN STANDARD SPECIFICATIONS FOR CONSTRUCTION.
5. ALL PROPOSED SIGNS SHALL CONFORM TO THE TOWN ZONING REGULATIONS.
6. PROJECT IS BASED ON USGS DATUM NAVD 1988. REFERENCE
7. THE LANDOWNER IS RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL WETLAND REGULATIONS, INCLUDING ANY PERMITTING AND SETBACK REQUIREMENTS REQUIRED UNDER THESE REGULATIONS.
8. DISTURBANCE IS UNDER 100,000 SQ. FT. ALTERATION OF TERRAIN PERMIT RSA 485-A-17 IS NOT REQUIRED.
9. ALL NEW HOUSES TO BE EQUIPPED WITH STONE DRIP EDGES TO COLLECT ROOF RUNOFF (SEE DETAIL).
10. ALL NEW DRIVEWAYS TO HAVE BIORETENTION (DRY) SWALES ON THE LOW SIDE (SEE DETAILS).

ZONING REQUIREMENTS

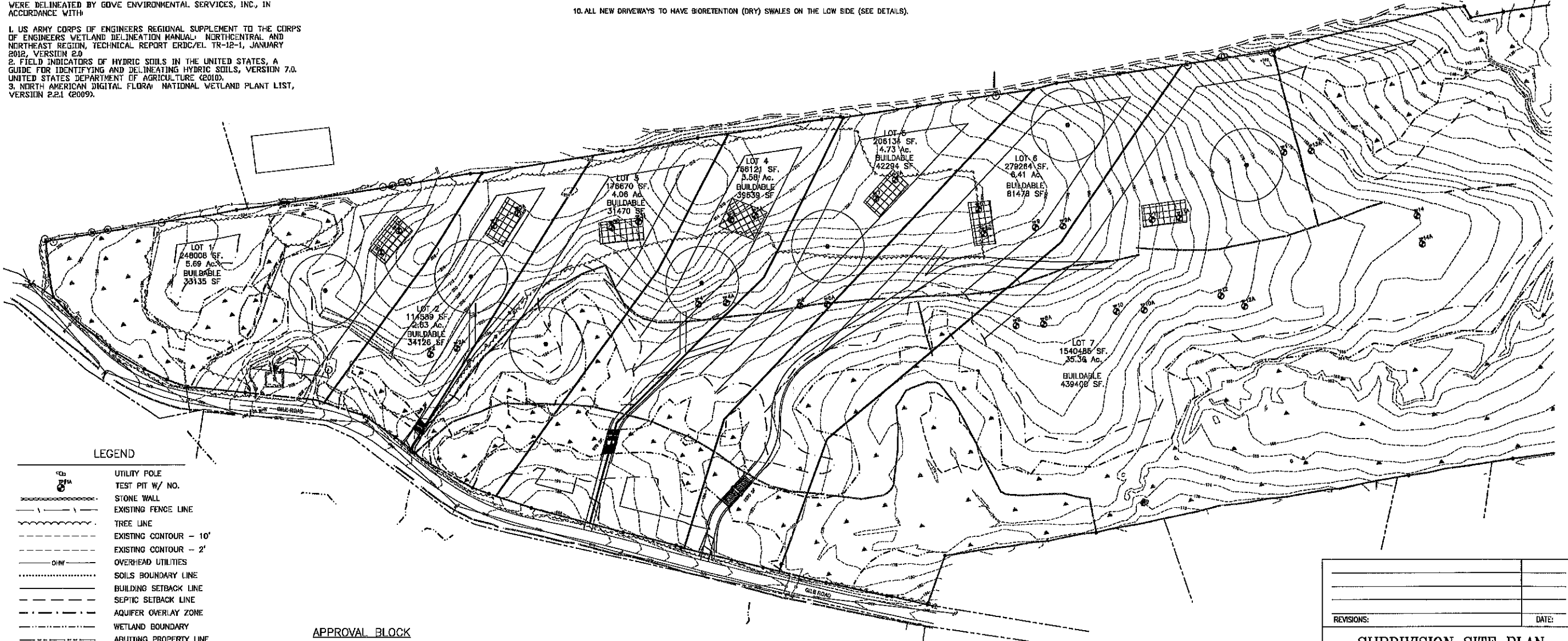
ZONE: RESIDENTIAL/AGRICULTURAL-(RA)
 MIN. LOT SIZE = 2 ACRES
 MIN. FRONTAGE = 200'
 MAX. HEIGHT = 34'
 MIN. OPEN SPACE = 60%

BUILDING SETBACKS:
 FRONT 50'
 SIDE & REAR 50'
 POORLY DRAINED SOILS 50'
 VERY POORLY DRAINED SOILS 75'

LEACH FIELD SETBACKS
 POORLY DRAINED SOILS 75'
 VERY POORLY DRAINED SOILS 75'

PREPARED FOR:
JOSEPH FALZONE
 7B EMERY LANE
 STRATHAM, N.H. 03885

BEALS ASSOCIATES PLLC
 70 PORTSMOUTH AVE, STRATHAM, N.H. 03885
 PHONE: 603-583-4860, FAX: 603-583-4863



LEGEND

- UTILITY POLE
- TEST PIT W/ NO.
- STONE WALL
- EXISTING FENCE LINE
- TREE LINE
- EXISTING CONTOUR - 10'
- EXISTING CONTOUR - 2'
- OVERHEAD UTILITIES
- SOILS BOUNDARY LINE
- BUILDING SETBACK LINE
- SEPTIC SETBACK LINE
- AQUIFER OVERLAY ZONE
- WETLAND BOUNDARY
- ABUTTING PROPERTY LINE
- EXISTING PROPERTY LINE
- PROPOSED PROPERTY LINE
- 4000 SF SEPTIC RESERVE AREA
- PROP. WELL W/ 75' PROTECTIVE RAD.

APPROVAL BLOCK

APPROVED TOWN OF NOTTINGHAM PLANNING BOARD

CHAIRPERSON	DATE

REVISIONS:	DATE:
SUBDIVISION SITE PLAN	
FOR: RESIDENTIAL DEVELOPMENT GILE RD NOTTINGHAM, NH	
DATE: NOV. 2020	SCALE: 1"=60'
PROJ. NO: NH-1155	SHEET NO. 3 OF 3

