

**TOWN OF NOTTINGHAM
ZBA VARIANCE
APPLICATION**

*Mark Pitkin
Tax Map 40, Lot 14
Gile Road*

Nottingham, New Hampshire

Prepared for:

Mark Pitkin
9 Squire Road
Fremont, NH 03044



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

Table of Contents

- *Site Locus*
- *Denial Letter*
- *ZBA Variance Application*
- *Tax Map & Tax Card*
- *Deed*
- *Photo Log*
- *11 X 17 ZBA Plan*

USGS SITE LOCUS



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228



NICHOLS ENVIRONMENTAL, LLC.

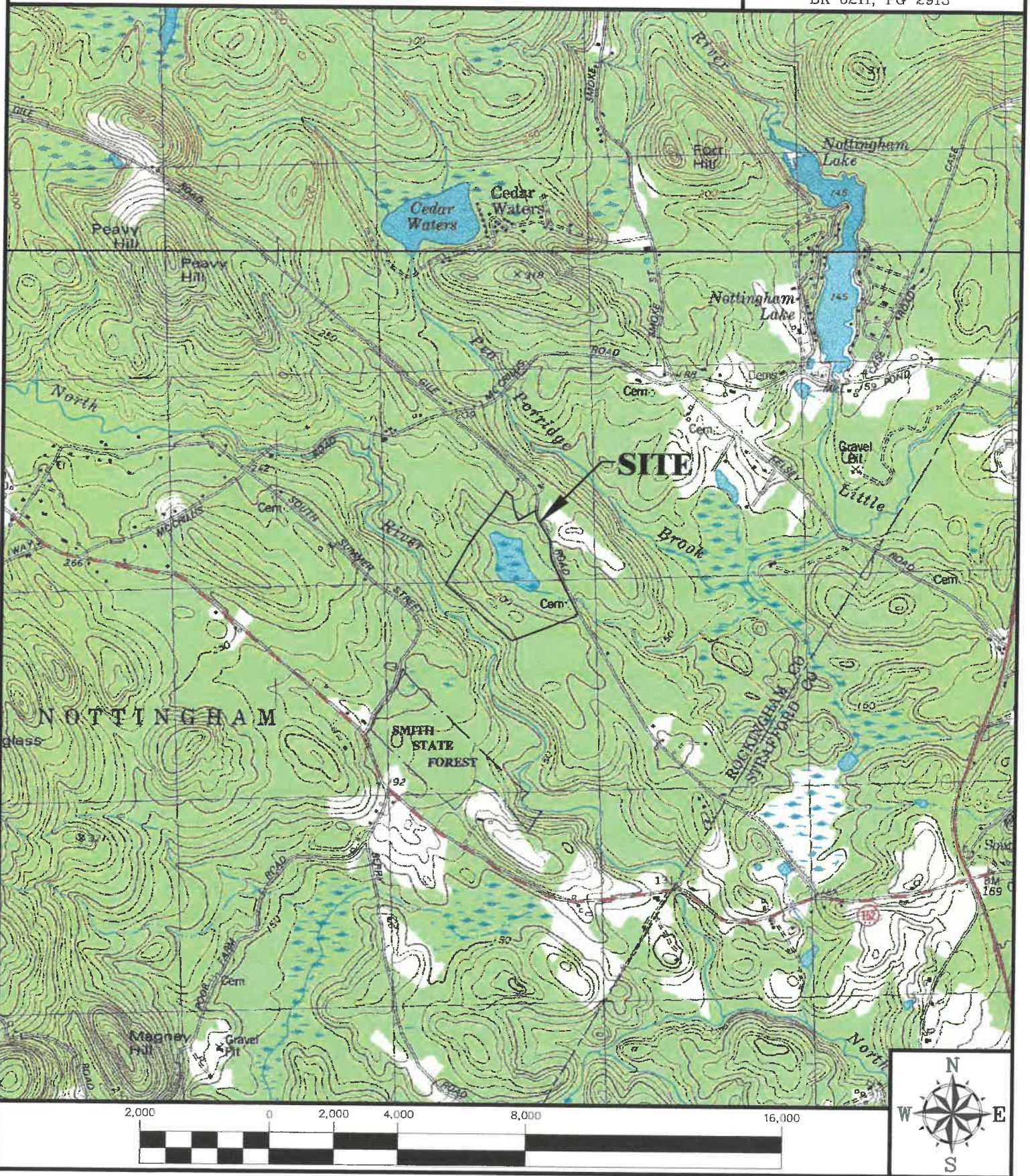
102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

SITE LOCATION:

GILES ROAD
TAX MAP 40, LOT 14
NOTTINGHAM, NH

OWNER OF RECORD:

MARK PITKIN
9 SQUIRE ROAD
FREMONT, NH 03044
BK 6211, PG 2913



**TOWN OF NOTTINGHAM
DENIAL LETTER**



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

Town of Nottingham
P.O. Box 114
Nottingham NH 03290

Code Administration



Office (603) 679-9597 x2
Fax (603) 679-1013
E-mail: dsylvia@nottingham-nh.gov
www.nottingham-nh.gov

Building Permit Application Denial

Date: 2/25/21
Owner: Mark Pitkin
Address: ___ Gile road
Map/Lot 40/14

Applicant has filed for a driveway.

Denial: Article III(B)(4) Wetland Conservation Areas

Permitted Uses - uses that do not result in the erection of any structure or alter the surface configuration of the land by the addition of fill or by dredging such as:

- a) forestry - tree farming
- b) agriculture, including grazing, farming, truck gardening and harvesting crops but not including the stockpiling of manure.
- c) construction of well water supplies
- d) wildlife habitat development and management
- e) parks and such recreation uses as are consistent with the purpose and expressed intentions of this ordinance.
- f) conservation areas and nature trails g) open space in accordance with subdivision regulations and other sections of this ordinance

Note: This denial is based upon the driveway application only. Further denials could apply after a building permit application is applied for.

Respectfully submitted,

Dale Sylvia
Code Enforcement

TOWN OF NOTTINGHAM
ZBA VARIANCE
APPLICATION



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228



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

**THE ZONING BOARD WILL NOT ACCEPT
 INCOMPLETE OR LATE APPLICATIONS**

PLEASE READ BEFORE FILLING OUT YOUR APPLICATION

Check the following boxes when complete to ensure application completeness:

- The **“Applicant’s Name”** on the application must be **the property owner(s) of record**
 - include a copy of the Deed and Tax card
- The applicant’s **mailing address** should be listed underneath the applicant’s name(s).
- All owners must also sign** the application on the last page.
- “Representative”** need only be filled out if someone else will be making the presentation for the applicant. This information must also be included on the last page of the application.
- Under **“Location of Property”** you need not fill out the tax map, parcel & zone if you do not know it. Simply list the address of the property involved.
- For **“previous Zoning Board action on this property”** see the Land Use Clerk.
- If you are seeking a **VARIANCE, you are required to complete the five points of law on your application. Failure to do so will result in a delay or a denial. Be as thorough as possible! Your case rests on these points!** If you have any questions, feel free to contact the Land Use Clerk. These points begin on page 4 and continue on through to page 5.
 - You or your representative may be required to **VERBALLY** present all five points of law during the Public Hearing.
- Please make copies for yourself so that you will have the same information the Board has when you present to them. All relevant information, plans, drawings, etc. must be submitted with your application** so that they may be on file in the Land Use Office as public information. *Remember, the more prepared you are, the less time you will need to spend before the Board.*
 - Please bring six (6) copies of any additional materials that were not submitted with your application (i.e. drawings, photographs, more detailed explanations or reasoning) to the meeting.
- Six (6) sets of 11”x17” plans drawn to scale** which show lot location, lot size, setbacks, locations and dimensions of all structures (see the Nottingham Zoning Ordinance definition), powerlines (overhead & underground), well & septic radius of abutters if known and open spaces on the lot in question and on the adjacent lots and ownership of adjoining lots of land (*professionally drawn NOT required*).
- For certified mailings of Public Hearing Notices **Please print and provide three (3) sets of MAILING LABELS (6.66cm x 2.54cm) for each abutter, owner(s) and representative (if applicable).** *If an owner/abutter is repeated on your list with the exact same name and mailing address, they will only be counted once.*
 - Notices for the public hearing with the Zoning Board of Adjustment will be published in a local newspaper, posted in at least two (2) public places and will be sent via certified mail to the **property**

owner(s), abutters and any other parties the Board may deem to have an interest (including any representative) at least five (5) days before the date of the hearing.

- Please read the paragraph on page 7 of the application regarding **abutters**. The Land Use office can assist you in determining your abutters, but **YOU ARE RESPONSIBLE FOR OBTAINING THE CORRECT OWNER AND MAILING INFORMATION FOR THIS LIST FROM THE ASSESSOR'S OFFICE.** When verifying the correct owner and mailing information, you are required to use the assessing information only.
- Please note that the abutters have the right to attend the meeting to speak for or against your case and ask any questions they may have. However, abutters do not vote on your case. Only the Board may vote.

The Land Use Clerk will calculate the Fee total upon application submittal. Fee Schedule page: 9

For your information:

- Applications are due Before 2:30pm on the scheduled deadline date to be on the following month's agenda but you **are strongly encouraged to apply earlier in case any additional issues need to be addressed.**
 - **Applications will not be accepted after 2:30 on the deadline date.**
 - **Incomplete applications will not be accepted at any time.**
- The Zoning Board of Adjustment meetings take place on the third Tuesday of the month in Conference Room 1 at the Nottingham Municipal Offices, 139 Stage Road, unless otherwise posted.
- Meetings begin at 7:00P.M. Your actual hearing time is dependent on the number of cases being heard that night and the other business of the Board.
- Decisions of the Zoning Board can be based **only** on the testimony presented at the public hearing. **It is the applicant's responsibility to provide the evidence in support of the criteria for the application.**
- The Board reserves the right to continue cases to either the following month or another agreed upon date, time and location, should the meeting run to a late hour.
- Meetings are recorded on tape. Please approach the Board for your presentation and speak clearly into the microphone so that your case may be recorded accurately.
- Your case will be decided during deliberations, which typically occurs immediately following your presentation. You are welcome to stay to hear your decision. You will also receive notification in the mail of the Board's decision. If you would rather stop by and obtain your copy, please make arrangements with the Land Use Clerk.
- **Seeking a SPECIAL EXCEPTION TO OPERATE A HOME OCCUPATION (HOME BUSINESS)?**
 - Please note that the State may have separate requirements for business licensing. Such requirements would be independent of this Special Exception and **it is the applicant's responsibility to ensure that any and all State requirements are fulfilled.**
- In order to prepare yourself for your presentation, please familiarize yourself with the following:

MEETING PROCEDURES

1. The Chair reads the case into the record
2. The applicant makes their presentation.
3. The Board addresses the applicant with questions and/or comments.
4. Those in favor of the request are asked to speak at the microphone.
5. Those opposed or have questions regarding the request are asked to speak at the microphone.
6. The applicant may rebut any comments or questions.
7. The opposition may then also rebut.
8. The Board addresses the applicant with any additional comments or questions.
9. The case is taken under advisement immediately and voted on unless the Board chooses to do so at a later time- but within 30 days.

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:
To allow for an impact of 2,532 s.f. to install a driveway for a single family home. 630 s.f. of which is tempory impact which will be restored.

Previous Zoning Board action on this property: None

SUPPORTING INFORMATION

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

2. The spirit of the ordinance is observed:
See attached document

3. Substantial justice is done:
See attached document

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

See attached document

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 document

ii) The proposed use is a reasonable one.

See attached document

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.



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

Supporting Information

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

The variance would not be contrary to the public interest because the intent of the ordinance is to restrict and minimize impacts to wetlands. The proposed project to install a driveway and underground utilities has been placed in such a manner as to minimize the impact to the wetland and surrounding buffers. By applying to NHDES for a wetland impact permit this allows the state and town the opportunity to review that the impact is located within the area of least impact. This is enforced under Nottingham Zoning Article IV (M) Fill and Dredge in wetlands, as well as NH RSA Chapter 482-A-3 and NH Code of Administrative Rules 100-800.

2. The spirit of the ordinance is observed:

The spirit of the ordinance is observed by minimizing the amount of impact to the wetlands, buffers, and surrounding properties. This is accomplished by following the procedures established by the state, and town. The towns regulations under Zoning Article IV (M) implies that permits are allowed to fill and dredge within wetlands, provided that they provide application in accordance with NH RSA Chapter 482-A-3 and NH Code of Administrative Rules 100-800.

3. Substantial justice is done:

Substantial justice will be done by following the regulations. By following state and town regulations this allows for the review of the impacts by NHDES, Nottingham Conservation Commission, Nottingham ZBA, notified abutters, and the public. By allowing the permitting process to take place it allows for all involved to review that the impact is indeed located to minimize the impact while allowing for the justified use of installing a driveway and utilities to access a large buildable portion of the property. There is no gain to the public from denying the variance that outweighs the loss to the Applicant from denial. Granting the variance will accomplish substantial justice.

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

The values of the surrounding properties will not be diminished by allowing for the installation of a driveway for a single-family residence. The proposed use is allowed within the Zoning District and is consistent with the surrounding properties.

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



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

5. A (i) Continued:

There is not a fair and substantial relationship between the general public. The purposes of the ordinance is to preserve the Town's rural character, while avoiding effects to abutting properties and resources. The installation of a driveway and utilities for a single-family residence is consistent with the area, allowed with in the Zoning District, and will not devalue abutting properties. The location of the driveway and underground utilizes has been located as to minimize impact to the wetland and surrounding buffer area.

ii) The proposed use is a reasonable one.

The proposed use is a reasonable one as it is a justified use, consistent with the surrounding properties, and allowed withing the Zoning District.

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 Joseph Nichols, Nichols Environmental, LLC.

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

Property Owner(s) *MMKAB* *2/26/21* _____
Signature Date Signature Date

Property Owner(s) *Jamie Ruste Perkin* *2/26/21* _____
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	Address
PITKIN, MARK TROSTLE-PITKIN, LAURIE ANN	9 Squire Road Fremont, NH 03044
2. Owner Name	Address
PITKIN, MARK TROSTLE-PITKIN, LAURIE ANN	9 Squire Road Fremont, NH 03044
3. Professional(s) Name	Address
Joseph Nichols, Nichols Environmental, LLC.	102 Chester Road, Fremont, NH 03044
James Gove, Gove Environmental Services, Inc	8 CONTINENTAL DRIVE BLDG 2 UNIT H, EXETER, NH 03833

MAP/ LOT/ SUB-LOT	ABUTTER(S) NAME	MAILING ADDRESS
4. See enclosed list and labels		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
 FREMONT, NH 03044
 nicholseenviro@gmail.com
 Office: 603-244-5325
 Cell: 603-234-3228

<p>Wetland Scientist: James Gove, CWS, CSS Gove Environmental Services, Inc. 8 Continental Drive Building 2 Unit H Exeter, NH 03833</p>	<p>Applicant: Joseph Nichols Nichols Environmental, LLC. 102 Chester Road Fremont, NH 03044</p>
<p>Site/Owner: <u>Tax Map 40, Lot 14</u> (Gile Road) Mark Pitkin Laurie Trostle-Pitkin 9 Squire Road Fremont, NH 03044 BK 6211, PG 2913</p>	<p>Abutters: <u>Tax Map 39, Lot 11</u> (125 Gile Road) Pascoe, Richard Pascoe, Carrie 125 Gile Road Trustees Revoc Trust Nottingham, NH 03290</p>
<p><u>Tax Map 40, Lot 2-3</u> (150 Gile Road) Bacon, Richard Bacon, Daniel 167 Gile Road Trustees Bacon Irrevocable Tru Nottingham, NH 03290</p>	<p><u>Tax Map 40, Lot 12</u> (Gile Road) Diberto, Robert L 334 Route 108 Madbury, NH 03820</p>
<p><u>Tax Map 39, Lot 12</u> (123 Gile Road) Ellison, Mary J Ellison, Brianna R 123 Gile Road Nottingham, NH 03290</p>	<p><u>Tax Map 39, Lot 13-1</u> (121 Gile Road) Solomon, Matthew D 121 Gile Road Nottingham, NH 03290</p>
<p><u>Tax Map 39, Lot 14</u> (53 McCrillis Road) Hess, John Jay 23725 Clarksmeade Drive Clarksburg, MD 20871</p>	<p><u>Tax Map 39, Lot 15 & 16</u> (51 McCrillis Road) Eversole, David M Zirkle, Holly A 51 Mccrillis Road Nottingham, NH 03290</p>
<p><u>Tax Map 40, Lot 1</u> (Gile Road) Ledge Farm Nottingham, LLC 7B Emery Lane Stratham, NH 03885</p>	



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

**ZONING BOARD OF ADJUSTMENTS
FEE SCHEDULE**

Fee's collected at time of application:

	TOTAL CHARGE	DATE PAID
APPLICATION FEE \$100.00	<u>\$100.00</u>	<u>3/1/2021</u>
ABUTTER NOTIFICATION 11 X \$10.00/PER ABUTTER	<u>\$110.00</u>	<u>3/1/2021</u>
PUBLIC NOTICE FEE \$75.00	<u>\$75.00</u>	<u>3/1/2021</u>
TOTAL	<u>\$285.00</u>	<u>3/1/2021</u>

LAURIE TROSTLE PITKIN
MARK PITKIN
9 SQUIRE ROAD
FREMONT, NH 03044

HOME EQUITY LINE OF CREDIT **107**

6-7041/2410

PAY TO THE ORDER OF

Town of Nottingham

Two Hundred Eighty five ⁰⁰/₁₀₀ DOLLARS

Citizens Bank®

MEMO ZBA Variance
616 Road

Laurie Trostle Pitkin

⑆241070417⑆ 4537142005⑆ 0107

THE FIVE VARIANCE CRITERIA

The following are excerpts from "The Board of Adjustment in New Hampshire: A Handbook for Local Officials" provided by the State of New Hampshire Office of Energy and Planning. While the information here is intended to assist the layperson in presenting the information required under State law to obtain a variance from the Town's zoning ordinance, it is still ultimately the applicant's responsibility to address the five variance criteria to the satisfaction of the Zoning Board of Adjustment during their presentation.

VARIANCES- A DEFINITION

A variance is a relaxation or a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal. "Variances are included in a zoning ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated. "Sprague v. Acworth 120 N.H. 641, (1980). The local ordinance cannot limit or increase the powers of the board to grant variances beyond statutory authority, this power must be exercised within specific bounds.

RSA 674:33 Powers of Zoning Board of Adjustment (effective September 22, 2013)

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(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.

(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.

(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 definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

THE FIVE VARIANCE CRITERIA

1. THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.

In the case of Gray v. Seidel 143 N.H. 327 (February 8, 1999) the NH Supreme Court reaffirmed the variance standard in RSA 674:33, 1(b) (1996), which states that the board has the power to A[a]uthorize...[a] variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

The court clarified that RSA 674:33,1(b) should not be read to imply an applicant must meet any burden higher than required by statute (i.e., there must be a demonstrated public benefit if the variance were to be granted) but merely must show that there will be no harm (i.e., “will not be contrary”) to the public interest if granted.

If an applicant makes even a conclusory statement like: “As you can see, there’s no adverse effect on the public interest,” that should be enough, unless abutters or board members themselves identify some specific adverse effect on the public interest, in which case the applicant will have the burden of overcoming it.

For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public? (see Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H, 577 (2005) on page 99.

2. THE SPIRIT OF THE ORDINANCE IS OBSERVED.

The power to zone is delegated to municipalities by the state. This limits the purposes for which zoning restricts can be made to those listed in the state enabling legislation, RSA 674:16-20. In general, the provisions must promote the “*health, safety, or general welfare of the community.*” They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers, and providing for adequate light and air. In deciding whether or not a variance will violate the spirit and intent of the ordinance, the [applicant] must determine the legal purpose the ordinance serves and the reason it was enacted. **“This requires that the effect of the variance be evaluated in light of the goals of the zoning ordinance, which might begin, or end, with a review of the comprehensive master plan upon which the ordinance is supposed to be based.”**

For instance, a zoning ordinance might control building heights specifically to protect adjoining property from the loss of light and air that could be caused by high buildings. The owner of a piece of property surrounded on three sides by water might be allowed a height variance without violating the spirit and intent, if the ordinance clearly states that this is the sole purpose for the building height limitation. On the other hand, if a landowner requested a variance for a proposed building that would shut out light and air from neighboring property, the granting of the variance might be improper.

As another example, consider the question of frontage requirements. Most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding of the land. If a lot had ample width at the building line but narrowed to below minimum requirements where it fronted the public street, a variance might be considered without violating the spirit and intent of the ordinance, because to do so would not result in overcrowding. There are many other variations of lot shapes and sizes that might qualify for a variance; the principles remain the same. The courts have emphasized in numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists.

However, when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be doubtful legality. The board cannot change the ordinance.

In Malachy Glen Associates, Inc. v. Town of Chichester (March 20, 2007), the supreme court stated that “*The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.*”

[T]o be contrary to the public interest... the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives. One way to ascertain whether granting the variance would violate basic zoning objectives is to

examine whether it would alter the essential character of the locality... Another approach to [determine] whether granting the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare."

3. SUBSTANTIAL JUSTICE IS DONE.

It is not possible to set up rules that can measure or determine justice. Board members must determine each case individually. **Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.** The injustice must be capable of relief by granting a variance it meet the other four qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance.

4. THE VALUES OF SURROUNDING PROPERTIES ARE NOT DIMINISHED.

Perhaps Attorney Tim Bates says it best in the OEP training video, Zoning and the ZBA: *"Whether the project made possible by the grant of a variance will decrease the value of surrounding properties is one of those issues that will depend on the facts of each application. While objection to the variance by abutters may be taken as some indication that property values might be decreased, such objections to do not require the zoning board of adjustment to find that values would decrease. Very often, there will be conflicting evidence and dueling experts on this point, and on many others in a controversial application. It is the job of the ZBA to sift through the conflicting testimony and other evidence and to make a finding as to whether a decrease in property value will occur. The ZBA members may also draw upon their own knowledge of the area involved in reaching a decision on this and other issues. Because of this, the ZBA does not have to accept the conclusions of experts on the question of value, or on any other point, since one of the functions of the board is to decide how much weight, or credibility, to give testimony or opinions of witnesses, including expert witnesses. Keep in mind that the burden is on the applicant to convince the ZBA that it is more likely than not that the project will not decrease values."*

5. LITERAL ENFORCEMENT OF THE PROVISION OF THE ORDINANCE WOULD RESULT IN AN UNNECESSARY HARDSHIP.

The term "hardship" has caused more problems for boards of adjustment than anything else connected with zoning, possibly because the term is so general and has so many applications outside of zoning law. By its basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. The restrictions on one parcel are balanced by similar restriction on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exists. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. The fact that a variance may be granted in one town does not mean that in another town on and identical fact patten, that a different decision might not be lawfully reached by a zoning board. Even in the same town, different results may be reached with just slightly different fact patterns. *This does not mean that either finding or decision is wrong per se, it merely demonstrates in a larger sense that home rule aspects of the law of zoning that are at the core of New Hampshire's land use regulatory scheme."* Nestor V. Town of Meredith Zoning Board of Adjustment, 138 N.H. 632, 644 A.2d 548, (1994)

(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.**

Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Is the full application of the ordinance to this particular property necessary to promote a valid public purpose?

Once the purposes of the ordinance provision have been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to his property would not advance the purposes of the ordinance provision in any "fair and substantial" way. This test attempts to balance the public good resulting from the application of the ordinance against the potential harm to a private landowner. It goes to the question of whether it creates a necessary or "unnecessary" hardship.

and (ii) The proposed use is a reasonable one.

The applicant must establish that, because of the special conditions of the property, the proposed use is reasonable. [H]ardship exists when special conditions of the land render the use for which the variance is sought 'reasonable.'

This is necessarily a subjective judgment- as is almost everything having to do with variances- but presumably it includes an analysis of how the proposed use would affect neighboring properties and the municipality's zoning goals generally. It clearly includes "whether the landowner's proposed use would alter the essential character of the neighborhood."

(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.

In the event the applicant is unable to satisfy the Simplex standard codified in paragraph (5)(A), he or she may still establish unnecessary hardship under the standard in paragraph (5)(B).

This provision states that unnecessary hardship is established "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."

Under this standard, it is not enough to show that the proposed use is reasonable; the applicant must establish that there is no other reasonable use of the property that would comply with the zoning ordinance. Even though the restriction significantly limits the value of the property, the standard is not met if the property can be put to any reasonable use. If the owner is currently making a reasonable use of the property, that fact is "conclusive evidence that a hardship does not exist." Further, the owner still must show that the subject property is unique, so that the zoning restriction imposes more of a burden on it than on other properties in the area.

[The five paragraphs above are from *The Five Variance Criteria in the 21st Century*, NH LGC Law Lecture #2, Fall 2009]

MUNICIPAL TAX MAP
&
TAX CARD



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228



NICHOLS ENVIRONMENTAL, LLC.

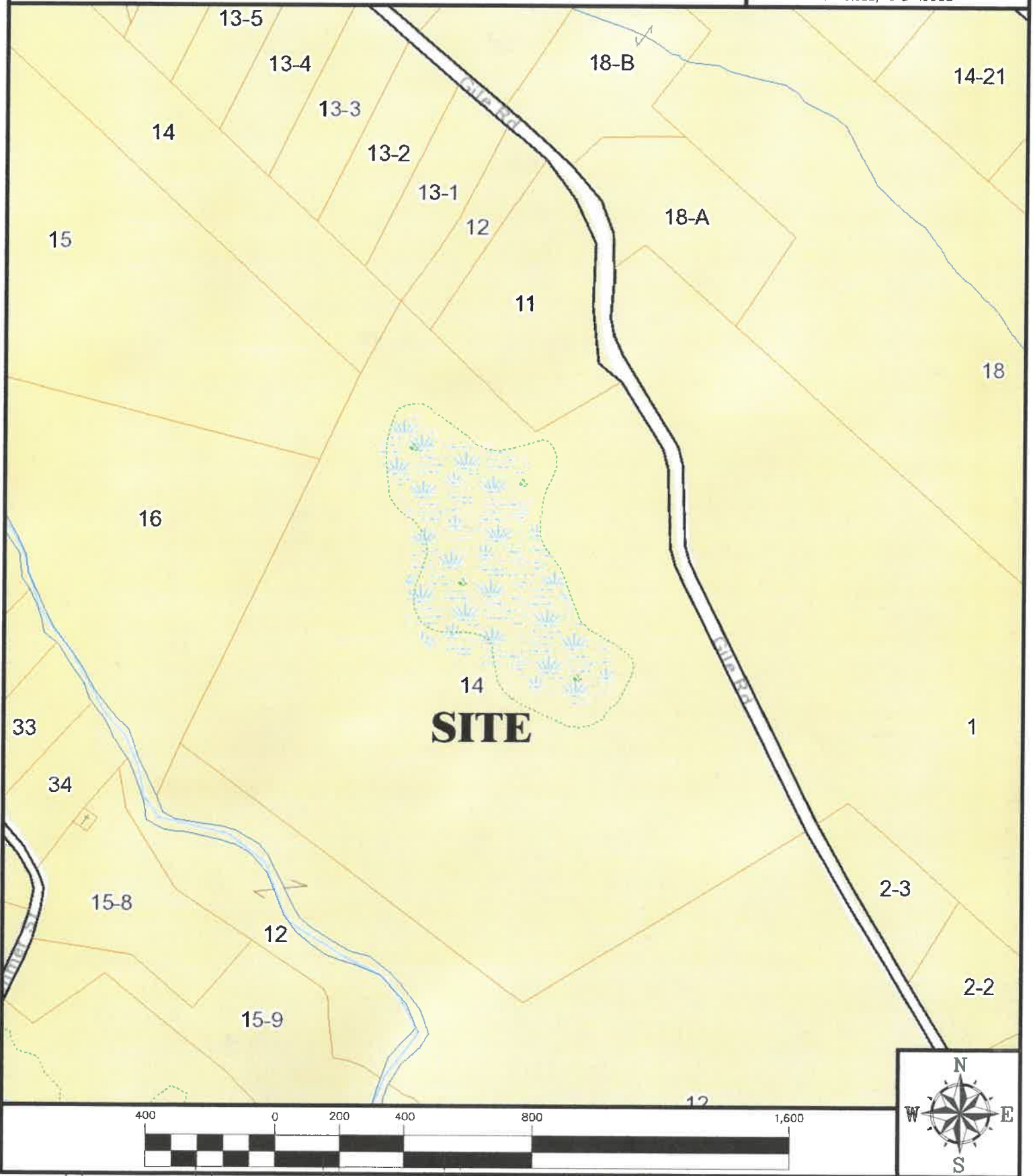
102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

SITE LOCATION:

GILES ROAD
TAX MAP 40, LOT 14
NOTTINGHAM, NH

OWNER OF RECORD:

MARK PITKIN
9 SQUIRE ROAD
FREMONT, NH 03044
BK 6211, PG 2913



OWNER INFORMATION		SALES HISTORY				PRICE GRANTOR
PITKIN, MARK		Date	Book	Page	Type	
TROSTLE-PITKIN, LAURIE ANN		12/22/2020	6211	2913	U V 40	150,000 LEDGE FARM
9 SQUIRE ROAD		12/18/2020	6201	1003	U V 21	400,000 MONTL, DIANE

LISTING HISTORY	NOTES
08/28/18 JOVL	VACANT; FRONTAGE 1555 FT PER MAP; 8/18; ADJ WETLAND COND FACTOR TO 10%;
04/05/18 INSP	
02/13/13 DMVL	
01/24/13 INSP	MARKED FOR INSPECTION

EXTRA FEATURES VALUATION		MUNICIPAL SOFTWARE BY AVITAR	
Feature Type	Units Length x Width	Size Adj	Rate

Year	Building	Features	Land
2019	\$ 0	\$ 0	\$ 2,733
		Parcel Total:	\$ 2,733
2020	\$ 0	\$ 0	\$ 3,113
		Parcel Total:	\$ 3,113
2021	\$ 0	\$ 0	\$ 3,113
		Parcel Total:	\$ 3,113

LAND VALUATION

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

Land Type	Units	Base Rate	NC	Adj	Site	Road	DWway	Topography	Cond	Ad Valorem	SPI	R	Tax Value	Notes
FARMLAND	2,000 ac	135,000	F	110	55	100	90	100 -- LEVEL	100	73,500	100	N	850	
UNMNGD OTHER	34,500 ac	x 2,500	X	82				95 -- MILD	100	67,200	75	N	1,803	
WETLANDS	20,000 ac	x 2,500	X	82				100 -- LEVEL	10	4,100	100	N	460	
UNMNGD OTHER	1,200,000 ft	x 60	F	110				95 -- MILD	100	75,200	0	N	0	
										220,000			3,113	

LAST REVALUATION: 2020

OWNER
 PITKIN, MARK
 TROSTLE-PITKIN, LAURIE ANN
 9 SQUIRE ROAD
 FREMONT, NH 03044

TAXABLE DISTRICTS
 District Percentage

Date	Project Type	Notes
PERMITS		

BUILDING DETAILS

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:

PROPERTY DEED



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

COPY

Mark Pitkin
Laurie Ann Trostle-Pitkin
9 Square Rd.
Fremont, NH 03044

LCHIP	ROA595412	25.00
TRANSFER TAX	RO102900	2,250.00
RECORDING		18.00
SURCHARGE		2.00

(Space Above this Line Reserved for Registry of Deeds)

WARRANTY DEED

LEDGE FARM NOTTINGHAM, LLC, a New Hampshire limited liability company, with a usual address of 7B Emery Lane, Stratham, New Hampshire,

for consideration paid,

grants to Mark Pitkin and Laurie Ann Trostle-Pitkin, husband and with, as joint tenants with rights of survivorship, having an address of 9 Squire Road, Fremont, New Hampshire,

with Warranty Covenants

A certain parcel of land with the buildings thereon, if any, situated in Nottingham, County of Rockingham, and State of New Hampshire, and lying on westerly side of Gile Road (a/k/a Wadleigh's Falls Road, a/k/a N.H. Route 152), and more particularly described as follows:

Beginning on the westerly side of said Gile Road at the graveyard identified in the deed recorded with the Rockingham County Registry of Deeds in Book 2055, Page 359;
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 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; thence running along the westerly side of Gile Road approximately 1555 feet to the point of beginning.

Specifically excepted from this conveyance is that certain parcel of land located on the easterly side of Gile Road, Nottingham, County of Rockingham, and State of New Hampshire, and being identified as "Lot 1" on a plan of land entitled "Plan of Land of Diane Monti, Tax Map 40, Lot 1,

Property Address: Gile Road, Nottingham, New Hampshire

Gile Road, Nottingham, New Hampshire” dated December 16, 2020, prepared by Doucet Survey, and recorded with the Rockingham County Registry of Deeds as Plan No. D-42530.

Also, excepting therefrom so much of the 50 foot wide public way known as Gile Road, located in said Nottingham.

Subject to rights of others, if any, for access to and from the graveyard referenced in that certain deed to from John A. DeMarchi and Marie DeMarchi to Romeo DiBerto and Mary L. DiBerto, dated December 31, 1970 and recorded with the Rockingham County Registry of Deeds in Book 2055, Page 359.

Said premises conveyed herein being a portion of the premises conveyed to Grantor by deed from Diane Monti, dated December 18, 2020 and recorded with the Rockingham County Registry of Deeds in Book 6210, Page 1003.

Said premises also being identified as Town of Nottingham Assessor’s Tax Map 40, Lot 14.

The Grantor herein releases any and all rights of homestead to the premises herein described and conveyed, and further states that there are no other persons having any rights of homestead to said premises.

This is a conveyance in the ordinary course of business and is not in contravention of the filed Certificate of Formation for the Limited Liability Company, as it may be amended. Neither this instrument nor any other record at the Registry of Deeds discloses anything in contravention of the laws of the State of New Hampshire and the grantor limited liability company appears from the records of the State of New Hampshire Secretary of State to exist.

The undersigned hereby certifies that he has been authorized on behalf of the Limited Liability Company to convey the above-described Lot, and he has been authorized by the Limited Liability Company to execute any and all documents necessary to effectuate said sale.

By executing this Certificate, the undersigned further certifies that he is named in the Operating Agreement and Certificate of Formation as one of the persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property on behalf of the limited liability company and such authority has not been amended, modified or revoked; that the Operating Agreement authorizes him to take all steps necessary to sell the premises described above on the terms and conditions contained in the deed recorded herewith; and that no member of Ledge Farm Nottingham, LLC has filed for bankruptcy protection.

This conveyance does not constitute all or substantially all of the New Hampshire assets of the grantor.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the said Ledge Farm Nottingham, LLC, has caused its seal to be hereto affixed and in these presents signed by Joseph Falzone, General Partner of Harbor Street Limited Partnership, Manager of Office Account, LLC, Manager of Ledge Farm Nottingham, LLC, this 18th day of December, 2020.

Ledge Farm Nottingham, LLC
By its Manager
Office Account LLC
By its Manager
Harbor Street Limited Partnership


By: Joseph Falzone, General Partner

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

On this 18th day of December, 2020, before me, the undersigned notary public, personally appeared Joseph Falzone, General Partner of Harbor Street Limited Partnership, Manager of Office Account, LLC, Manager of Ledge Farm Nottingham, LLC, who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in the capacity indicated, and that he has the authority to sign in that capacity.



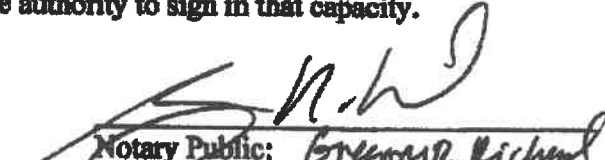

Notary Public: Gregory R. Richard
My Commission Expires: 8/18/24

PHOTO LOG



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholseviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228



NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

Photo 1. Looking at wetland crossing # 1 Facing South West.



Photo 2. Looking at wetland crossing # 1 Facing North East.





NICHOLS ENVIRONMENTAL, LLC.

102 CHESTER ROAD
FREMONT, NH 03044
nicholsenviro@gmail.com
Office: 603-244-5325
Cell: 603-234-3228

Photo 3. Looking at wetland crossing # 2 Facing North West.



Photo 4. Looking at wetland crossing # 2 Facing South East.

