

Nottingham Zoning Board Meeting

11/16/21

Official Minutes

1 **Call to Order**

2 **Members Present:** Chair Terry Bonser, Vice Chair Teresa Bascom, Bonnie Winona
3 MacKinnon, Raelene Shippee-Rice, Alternate Kevin Bassett

4 **Absent:** Romeo Danais,

5 **Alternate Seated and Voting:** Kevin Bassett was seated for Romeo Danais

6 **Others:** Kevin Lemieux Land Use Clerk, Applicant Joseph Costa, Applicant Sharon Costa

7 Chair opened the meeting at 7:01 pm. Chair read rules of board and hearing process.

8 **Public Hearing:**

9 *Case# 21-013-VA: Application from Joseph and Sharon Costa requesting a variance from*
10 *Article II Section C.3.a of the Nottingham Zoning Ordinance to permit the building of a*
11 *garage with 5-foot setbacks where 20 feet is required. The property is located at 251 Cooper*
12 *Hill Road in Nottingham, NH and is identified as Tax Map 2 Lot 2.*

13 The applicants, Mr. Joseph, and Ms. Sharon Costa introduced themselves. Ms. Bascom asked
14 the applicant if they brought their paperwork. The applicants said they did not. Mr. Lemieux
15 provided them a copy of their submitted application for use during hearing.

16 Mr. Costa said that they have limited area to install a garage due to setbacks and wetland areas.
17 He said that he spoke with his neighbor and his neighbor has no problem with the garage being
18 installed less than the permitted setbacks. He said that they were looking to install just one
19 garage because they have no other way to protect their vehicles. He said the garage would be
20 36' x 24' feet. He stated that the only other area in which they could put the garage has massive
21 boulders that would need to be blasted. He also said that the boulders add aesthetic value to the
22 property, and he would rather not have to get rid of them. The Board agreed that the boulders
23 were aesthetically pleasing and didn't see a need for blasting. Mr. Costa said that he doesn't
24 think he needs a 5' setback variance, more like 8' or 9' from his calculations, however, he
25 wanted to be safe by applying for 5 feet.

26 Ms. MacKinnon asked if both property owners were on the application. Sharon Costa said she
27 was not and that her husband was taking care of the variance. Ms. MacKinnon recommended
28 that she add her name to the application as she is also the property owner. Ms. Costa later added
29 her name to the application.

30 Mr. Costa continued by saying that they have limited area to install the garage. The other side of
31 property that would be suitable for a garage is where the property septic system is located. Ms.
32 Costa added that there are areas of poor drainage that are not suitable for building.

33 Mr. Bonser asked about the trailers on the property. Ms. Costa said that the trailers belonged to
34 them and that they were partially on the neighbor's property, however, the neighbor knows and
35 is OK with it. Mr. Bonser asked if the existing fence was the property line. Mr. Costa said it
36 was. Ms. Shippee-Rice asked if those were wetlands in the front of the property. Ms. Costa

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37 said they are classified as poorly drained areas. Mr. Bonser said that poorly drained areas have a
38 50-foot setback while very poorly drained areas have a 75-foot setback. Mr. Bonser asked how
39 far back the property line was from the storage container off the driveway. Mr. Costa said it was
40 about 30 feet.

41 Ms. MacKinnon asked for clarification of the property Tax Map and Lot number. Mr. Costa's
42 drawing had mislabeled the Lot as tax Map 2 Lot 1 as it should be labeled as Tax Map 2 Lot 2.
43 Ms. Bascom asked if the applicants were related to the neighbor because they had a shared
44 driveway. Ms. Costa explained that the previous property owners were related to the neighbor.
45 She said that it was subdivided at some point before they owned the property.

46 Mr. Bassett asked if he could see the plot plan. Mr. Lemieux said that he does not have a plot
47 plan, however, he does have the Tax Map. Mr. Lemieux showed Mr. Bassett the Tax Map. Mr.
48 Bassett asked Mr. Costa for clarification on the layout of his property using the tax map. Mr.
49 Costa explained the details of his property to Mr. Bassett.

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51 Mr. Bonser noted that in part of the application, the applicant asked for a 10-foot variance,
52 however, on the first page of the application, the 10-foot request was crossed out and 5-foot was
53 added. Ms. Bascom said that was not an issue because the Board changes things all the time as
54 long as it's stated within the motion.

55 Mr. Bonser asked the applicant to read his Five Criteria for the variance. Mr. Costa said that he
56 had already read four of them and he just needed to read the fifth criteria. Ms. Bascom said that
57 it was fine, and Mr. Costa read the last criteria.

58 Ms. Bascom asked for clarity regarding the setback variance being requested. She asked if the
59 variance was for 5 feet or for 15 feet. Mr. Costa said that they were looking for a 15-foot
60 variance from the 20-foot setback rule.

61 Ms. Bascom asked if someone told the applicant that they needed to blast the rocks to make
62 room for the garage. She said the rocks could have been placed there. Mr. Costa said that they
63 are glacial rocks, and he figures that they weren't moved because there are old trees and dirt
64 around the rocks.

65 Mr. Bonser said the other rule that the applicant could have got a variance from was the
66 wetlands. Mr. Costa agreed. Mr. Bonser said, however, that the applicants are here for a
67 variance from the property line.

68 Mr. Bassett said that it's very unusual to get a variance for a set back of a property line on 17
69 acres of land, however, given that the property shape is long and thin, it is unique. Mr. Bonser
70 asked for clarification of the property driveway and road frontage. Mr. Costa explained that
71 when the property was subdivided the town required a certain amount of road frontage. He
72 explained that is the reason his property goes around his neighbor's property. He said that they
73 have frontage on the other side of the neighbor and that area of frontage is also wetlands.

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74 Mr. Bonser opened the floor for comment. There was no public comment.

75 ***Ms. MacKinnon made a motion to approve Case# 21-013-VA. Ms. Shippee-Rice seconded the***
76 ***motion. The motion was unanimously approved 5-0.***

77 Mr. Bonser explained to the applicants that there is a 30-day appeal window for any resident to
78 appeal the hearing decision. He also explained that the variance is good for two years.

79 ***Mr. Bassett made a motion to accept the minutes from the August 17, 2021, Zoning Board***
80 ***meeting. The motion was seconded by Ms. MacKinnon. The motion was unanimously***
81 ***approved 5-0.***

82 The board moved on to the statements from the September 21, 2021 Zoning Board meeting in
83 which Mr. Michael St. Laurent, a town resident, wanted included in the minutes for that date.
84 Mr. Lemieux explained that he wrote out the direct quotes from Mr. Bonser and Ms. Bascom that
85 Mr. St. Laurent requested. Mr. Lemieux said he provided the quotes to the Board in their
86 folders.

87 Ms. Shippee-Rice mentioned that she understood Mr. St. Laurent's concern about Mr. Bonser
88 stating that the rehearing was only to hear new stuff. She said that she researched rehearing
89 procedures and she understood it to mean that the any previous items can be discussed. Ms.
90 MacKinnon agreed. Mr. Bonser said he didn't believe a rehearing would start from scratch. The
91 board discussed the topic of a rehearing.

92 Ms. Shippee-Rice stated a that she wanted the board to clarify a rehearing. She asked, is it to
93 rehear a case or is it only to include previously unheard materials? Ms. MacKinnon said that she
94 doesn't believe the Board could answer that question, however, it is a question for a lawyer. Mr.
95 Bonser said that that previous rehearsings only discussed newer things, not a rehearing of the
96 whole case. Mr. Bassett asked what are the ramification if the limiting of a rehearing was not
97 legally permissible? Mr. Bonser said that an appealed to the Superior Court would ultimately let
98 them know if the Board did something wrong.

99 Ms. MacKinnon said that since the case goes to the Superior Court, the Board will not get
100 involved, however, the town attorney will. She said that the Board will eventually hear the
101 judgement of the case.

102 The Board discussed a similar case, White's Grove, and how the legality of that case unfolded.
103 Ms. Bascom said that since in that case, the Board was not told to start from the beginning, that
104 she believed it was the same for this case. Ms. Bascom said maybe the thing to do is to follow
105 up with legal. Ms. Bascom quoted RSA 677:2 that discusses a motion for a rehearing in the
106 2018/19 edition of the NH Planning and Land Use Regulations book.

107 Ms. Shippee-Rice asked if a motion is needed to resolve the rehearing issue. Mr. Bonser said
108 that Mr. Lemieux can research and discuss with legal counsel.

109 The Board discussed incorporating the quotes from the September 21st meeting that Mr. St.
110 Laurent requested. The quotes from Mr. Bonser and Ms. Bascom will be added to those minutes.

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111 Ms. Bascom asked Mr. Lemieux about next year's meeting calendar. Mr. Lemieux said that he
112 was working on the next year's calendar.

113 Ms. Bascom asked if there was any application submitted for next meeting yet? Mr. Lemieux
114 said he did not have any applications yet, however the deadline is Monday, November 22.

115 *A motion was made by Ms. Bascom to adjourn the meeting. The motion was seconded by Ms.*
116 *Shippee-Rice. The motion was unanimously approved 5-0.*

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118 *The meeting was adjourned at 8:00 PM.*

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