

# NOTTINGHAM ZONING BOARD OF ADJUSTMENT

June 22, 2021

## Official Minutes as of 7/20/21

**Meeting location: Conference Room #1 Town Office Building 139 Stage Road**

**Members Present:** Bonnie Winona MacKinnon, Chair; Romeo Danais, Terry Bonser; Raelene Shippee-Rice

**Others Present:** Nicole Robbins, Jennifer Gonzales-Menard, James Gregoire, Tami DeFrancesco, James George, Gerry George, Glanna George, Ben Merriman, Bridget Jackson, Jeff Preve, Gerard George, Lee Weldy, Sharon Weldy

**Call to order:** 7:05 pm

**Roll Call:** To account for members present

### **Public Meeting**

Hearings held on June 15, 2021 were conducted via Zoom without a physical location where the public could participate. The Governor's Executive Order authorizing such meetings had lapsed prior to that date. At the call of the Chair, the ZBA will convene and consider re-hearing the two cases:

**Case 21-008-VA** Application from Tami Defrancesco and James George for a Variance from Article II, Section C of the Zoning Ordinance to permit watercross events with incidental camping (i.e., "commercial use") three weekends per year. The property is located at 214 Raymond Road in Nottingham, NH and is identified as Tax Map 69 Lots 8 & 10.

**Case 21-009-VA** Application from Mitch & Carol Hale, represented by Barry Gier, Jones & Beach Engineers, Inc. requesting a Variance from Article 3 Section C (3) of the Nottingham Zoning Ordinance to permit to permit construction of a septic system within 20' of property line. Proposed septic system to be located 6' from north property line. The property is located at 59 Shore Drive in Nottingham, NH and is identified as Tax Map 68 Lots 37.

**Bonnie Winona MacKinnon** read a letter from the Nottingham Town Attorney :

*Good morning Bonnie:*

*For over a year the law has been changing rapidly as the Governor has issued dozens of orders that have suspended certain provision of statutes, including RSA 91-A. Because the Governor's State of Emergency ended on June 12, 2021, we are back to following the plain language of RSA 91-A.*

*If the ZBA did not provide the public an option to attend the June 15, 2021 meeting in-person, then the June 15, 2021 meeting was in violation of RSA 91-A:2 as Governor's Emergency Order #12 allowing for remote access expired on June 12, 2021. Additionally, any swearing-in should be redone in-person as Emergency Order #23 paragraph 9 allowing for electronic swearing-in has also expired.*

*The remedy should be to have the board rehear the application. The board can make the decision to rehear on its own without a resident raising a rehearing motion. I would suggest you schedule an in-person meeting as soon as possible (certainly within the rehearing period) where the board explains the procedural issue to the public and then votes to hold a rehearing. The ZBA should then send out new notices to abutters and the public for the rehearing meeting.*

*Thanks, Mike [ed. Attorney Michael P. Courtney, Upton & Hatfield LLP]*

Bonser stated he did not think the Zoning Board of adjustment violated any rules. Danais stated no rehearing necessary, if someone appeals the ZBA decision, the board will hold a rehearing. If no appeal, no need for rehearing.

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**Motion Made by:** Danais –to not rehear the June 15<sup>th</sup> 2021 ZBA cases. **Seconded by**  
MacKinnon **Roll Call Vote: 1-2-1**

Winona MacKinnon- N	Danais- Y
Bonser- ABSTAINED	Shippee- Rice- N

**Motion Defeated.**

**Motion Made by:** Shippee-Rice to rehear cases. **Seconded by:** MacKinnon

**Roll Call Vote: 2-2-0**

Winona MacKinnon- Y	Danais- N
Bonser- N	Shippee- Rice- Y

**Motion defeated.**

Danais and Bonser discussed the attorney's option, said that is just one opinion, said if someone appeals the Zoom Meeting from June 15<sup>th</sup>, the ZBA will rehear the case.

The question was raised by Shippee-Rice – what is the cost/benefit ratio? Is there risk to the town? What is the disadvantage to following Attorney Courtney's advice? Would people petitioning for variances have to delay?

If the decision is to go with the last vote, ZBA is in an appeal period. If an appeal occurs the ZBA will vote to hold a rehearing. This then reduces the potential for a lawsuit against the town. The suggestion was made by Bonser and Danais to approve the vote of the last meeting and not conduct a rehearing. If someone asks for a rehearing we meet to decide on a rehearing. There are still 23 days left to file an appeal. Danais said when you drive, you may speed, but you don't get in trouble unless you get caught.

**Motion Made by:** Danais to let the decision on **Case 21-008-VA** (Defrancesco) stand. **Seconded**  
by Bonser.

**Case 21-009-VA** (Hale) will be reheard at the next meeting.

**Roll Call Vote: 2-2-0**

Winona MacKinnon- N	Danais- Y
Bonser- Y	Shippee- Rice- N

**ADJOURNMENT**

**Motion Made by:** Terry Bonser

**Seconded By:** Danais

**Roll Call Vote: 4-0-0**

Winona MacKinnon- Y	Danais-Y
Bonser- Y	Shippee- Rice - Y

**Motion Passed**

**Adjourned at: 7:40 pm**

Respectfully submitted for the Nottingham Zoning Board of Adjustment  
Kelly Dallaire, Board of Selectmen Secretary