

Nottingham Zoning Board Meeting

9-21-21

Official Minutes

1 **Call to Order**

2 **Members Present:** Chair Terry Bonser, Vice Chair Teresa Bascom, Romeo Danais, Bonnie
3 Winona MacKinnon, Alternate Kevin Bassett

4 **Absent:** Raelene Shippee-Rice

5 **Alternate Seated and Voting:** Alternate Kevin Bassett, Alternate for Raelene Shippee-Rice

6 **Others:** Lorraine Petrini, Lee Weldy, Mary Colvard, John Bartsch, Erin Harkins, Dale Sylvia,
7 Tami DeFrancesco, Susan Montiguy, Nicole Robbins, Bridget Jackson, Jeff Prue, James
8 Gregoire, Michelle Boucher, Jason Boucher, Rich & Mary Ellen Cote, Matt & Barbara Bergeron,
9 Michael & Jennifer Menard, Michael & Donna Pergamo, Steven Reynolds, Andrea Oliveria,
10 Christina Snyder, Gerard George, Giovanni Cintolo, Matt Griswold, Gia Griswold, Mike St.
11 Laurent, John Morin, Emerall Reid, Pamela Kelly, Scott Frankiewicz, James George, Brian
12 Bouchard, George Holt, Carl Munn

13 Chair opened the meeting at 7pm. He went over the rules of the public hearings.

14 **Public Hearings**

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

19 Mr. Bonser said; “We’ve heard this case twice, two or three times. We’re in for a rehearing
20 tonight. On this case, we’ve heard 5.5 to 6 hours’ worth of testimony already. So, I am going to
21 try to limit it to just new stuff”. He continued, “We want to try to limit this because we have two
22 more cases. We’ve heard this case, really just new stuff.”

23 Mr. Bouchard represents Ms. DeFrancesco and Mr. George. The Board was given a letter from
24 Mr. Bouchard’s office. The property evaluation will be addressed as new information. This case
25 is for a watercross event that will happen three times a year: spring, summer and fall. The goal is
26 not have these events during lake season except for one time. They will occur in late May, late
27 Sept./early Oct. and one in the summer. The event will go from Friday to Sunday. Hours will be
28 Friday 4-6pm, Sat 10-6pm and Sunday 10-6pm. The campers will move south to almost
29 exclusively on Lot 10. The parking will be on Lot 8. The application for a variance isn’t to use
30 snowmobiles on the water; they can do that already. Mr. Bouchard continued to say that it’s
31 private property; they can run snowmobiles from sunrise to sunset. The variance is to host
32 commercial events on property that is zoned residential. This property has been an active gravel
33 part for the past 40 years. Mr. Bouchard said his clients are process abiding residents. Over the
34 past 2.5 years, they have worked through the appropriate boards. They have received permits
35 from the state, Fish and Game, NHDOT, etc. They also checked with the towns of Epping and
36 Barrington as well. Mr. Bouchard said he doesn’t believe there should be a rehearing although he
37 understands why the Zoning Board granted it. He doesn’t believe the abutters proper standing

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38 requested a rehearing, instead it was others who are not proper abutters. Three of the people who
39 requested a rehearing live on Indian Run Road which is almost a mile away from the property
40 and one of them is a tenant in the condos. 'Standing' is for only someone who owns land. A
41 tenant cannot request a hearing. The prior public hearing was not in person; however, Mr.
42 Bouchard believes that the meeting was legal. He believes the Board should not change their
43 decision from June 15. Mr. Bouchard said that Ms. MacKinnon asked if the watercross events
44 would harm the drinking water. He said they have an answer for this. George Holt, an expert in
45 this field, said that the watercross events would not cause a hazard to the drinking water around
46 any of the surrounding areas. Mr. Lavoie, an appraiser, said that the surrounding properties
47 would not experience any decrease in property value.

48 Ms. MacKinnon said she doesn't agree with the appraiser's statement. She has worked in real
49 estate since 1977. An appraiser gets involved with a sale for the lending institution for the buyer,
50 and this happens after the property value is determined by the broker who uses sales data. She
51 believes the properties that abut the gravel pit would diminish mostly because of the noise
52 nuisance. No one could have an open house during these events. She's not against the watercross
53 events but not in favor of where they would occur. Lee has another type of racing event and the
54 town recently got reassessed by Cross Country Appraisers. Ms. MacKinnon said the appraiser
55 there said the properties near the Lee Raceway are given a 3% reduction in value and the
56 neighborhood is downgraded in this area. The devaluation is because of the noise. She read the
57 statement from Steve Reynolds which was on facebook. In this post, he was inviting anyone
58 from Nottingham to attend for free. He also said that he was not denying the races were loud and
59 would be a nuisance for some because if he did so it would be false information and a lie.

60 Mr. Bouchard said he only uses an appraiser when determining the property values. He has never
61 been challenged doing that. Divorce law uses an appraiser. Ms. MacKinnon said that's not a
62 marketed property. Mr. Bouchard said his appraiser is a qualified expert. Ms. MacKinnon said
63 she has a different opinion as does the appraiser she spoke to.

64 Mr. Bouchard said the Board can't cast aside the Mr. Lavoie's expertise. He disagrees the
65 watercross would diminish the housing value. He said that Ms. DeFrancesco listed one of the
66 condos next door to the gravel pit, and it was listed for 25% more than what it was purchased for.
67 Some of the people who attended the open house were excited about the watercross in the areas.

68 Mr. Bonser said evaluations never go down. He hears the Lee racetrack all summer long. There
69 have been up to 1000 houses built around it. Kelsey Road has a house that is being built, and it's
70 over \$600k.

71 Mr. Bouchard said Mr. Reynolds was up front with the noise that watercross causes. He said it
72 doesn't make more noise than an active gravel pit. He said the town doesn't have a noise
73 ordinance. There are no parameters to measure noise. Accepting the watercross events may limit
74 the noise as they will not race snowmobiles except for the approved dates. Right now, they could
75 run snowmobiles all the time.

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76 Ms. MacKinnon said her concern is how this event affect property values. There are 5 factors
77 that have to be met in order for a variance to be approved. Mr. Bouchard said they can't ignore
78 the report that is from an appraiser. Ms. MacKinnon said she disagrees with it.

79 There are no questions for Mr. Holt's geological report.

80 Mr. Bouchard went over the 5 factors that would have to be met for the variance. It's a massive
81 lot of 88 acres and has a sizeable pond that is uniquely suitable for this event. It's an active
82 gravel pit which is more like an industrial area than a residential area.

83 Mr. Bassett said there was discussion in past meetings why this property is zoned as residential.
84 Mr. Bouchard said it is not familiar with that. He said it's actually very unusual for an active
85 gravel pit to be zoned in a residential area. Ms. MacKinnon asked why Mr. Bouchard thought
86 this land would better zoned as non-residential. Mr. Bouchard said it's especially suited for this
87 type of event, and it wouldn't make a great residential area.

88 Ms. MacKinnon said the property is grandfathered in to be used as a gravel pit. The zoning
89 ordinance allows them to use it commercially. Their constitutional right to earn money from this
90 site is not squelched if watercross is not allowed. She spoke with the wetlands bureau, and they
91 said the pond is not a natural feature and was created by the gravel operation. Mr. Bouchard said
92 the hardships are that it's uniquely suited for this event. It doesn't make any sense to treat the
93 property as residential when it's an active gravel pit.

94 Mr. Bouchard said the pollution issue has been addressed. There is already substantial noise
95 already because it's a gravel pit. They already can race snowmobiles any time they want but will
96 only do it 6.5 days a year for these events instead.

97 Mr. Bassett asked about the fence. Mr. Bouchard said the Planning Board is taking up that issue.

98 **Public Comment**

99 Susan Montsigne owns 212 Raymond Road and put her condo up for sale. The noise cannot be
100 heard with the windows shut. She said the complainers do not own the property at the condos.

101 Mr. Michael St. Laurent came forward for public comment.

102 Mr. Bonser said, *"You got to stick to new stuff"*

103 Mr. St. Laurent, *"New stuff, brand new."*

104 Mr. Bonser, *"We had you for quite a while"*

105 Michael St. Laurent asked if Mr. Holt is an expert in emissions from snowmobiles. Mr. Holt
106 stated his qualifications. He said he has not worked specifically on snowmobiles but has
107 experience with similar vehicles. Mr. Bouchard asked Mr. Bonser to make sure this does not turn
108 into a cross examination of Mr. Holt, and Mr. Bouchard suggested that Mr. St. Laurent can state
109 his qualifications. Mr. St. Laurent asked how the gas and oil is dispersed into the air. Mr.
110 Bouchard reiterated that Mr. Holt does not need to answer these, and it's covered in his report.

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111 Mrs. Bascom said they are here for a specific variant and the gas and oil does not need to be
112 covered now. Mr. Bonser said they have gone over all this other information; if Mr. St. Laurent
113 has questions about Mr. Holt's report, Mr. St. Laurent can ask those. Mr. Laurent said he has
114 been a taxpayer on Indian Run Road.

115 Mr. St. Laurent mentioned the potential noise from the Watercross Events and the previous noise
116 tests that have been done.

117 Ms. Bascom said, *"There is no noise ordinance in Nottingham., so the sound issue is not*
118 *something we can put up against any standards to discuss it. If you can say its loud, its loud, we*
119 *get that, but there's no standard in which we can measure the noise and say that it doesn't meet*
120 *our standard because we do not have one."*

121 Mr. St. Laurent referred to the events as nuisance noises and asked if the previous noise tests that
122 were done will be referenced.

123 Ms. Bascom said, *"The testing that the people running the event did was actually considered by*
124 *other people as not valid and they were asking for other testing to be done. Like we said, there is*
125 *no standard, so we have nothing to match it up with."*

126 Mr. St. Laurent spoke to aquifers. Mr. Danaïs said there is a clay bottom in the pond at the
127 property.

128 Carl Munn spoke to the noise level and corrected false information. He said the snowmobile
129 noise is 100x louder than gravel pit. He said this is a dangerous noise level.

130 Pamela Kelly said she would like to speak to the issue of hardship. The hardship of the applicant
131 has to be proven as one of the five criteria. She read the definition of hardship. She said the
132 applicant will not suffer from loss of income as it's a successful gravel pit business. The
133 applicants are not looking to expand the business of the gravel pit; they are looking to have a
134 new business there.

135 Mr. Bouchard said he was not calling Mr. St. Laurent disingenuous; he was saying his argument
136 was. Mr. Bouchard continued to say that the snowmachines are allowed to run right now. The
137 clients are trying to have an event for 6.5 days, and it will limit the amount of noise. He asked
138 the Board to look at the definition of hardship in the statute. He said those who have voted yes
139 for June 15 should vote yes now as the new information that was presented only strengthens their
140 case.

141 The hearing was closed at 7:18pm.

142 **Mrs. Bascom made a motion to accept the application from Tami DeFrancesco and James**
143 **George as written. Mr. Danaïs seconded.**

144 **Mrs. Bascom read the application: *Case #21-008-VA Application from Tami DeFrancesco***
145 ***and James George for a variance from Article II, Section C of the Zoning Ordinance to permit***
146 ***watercross events with incidental camping (i.e "commercial use") three weekends per year.***

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147 *The property is located at 214 Raymond Road in Nottingham, NH and is identified as Tax*
148 *Map 69, Lots 8 & 10.*

149 Ms. MacKinnon asked if they could place restrictions like they only practice on those weekends.
150 Mr. Bonser said they did not do that in the past.

151 **It was approved by a vote of 4-1 with Ms. MacKinnon nay.**

152 Ms. MacKinnon said she believes it does not fit the five criteria used to receive a variance.

153 *Case #21-011-VA Application from Richard and Maryellen Cote for a variance from Article*
154 *II, Section (c) 1 to change the use of one unit to unspecified office. The property is located at*
155 *18 Cooper Hill Road and is known as Tax Map 16, Lot 5.*

156 Mr. Frankiewicz said the Planning Board sent them to Zoning Board. The Cotes said they would
157 like to have office space in this building. This area was considered a storage area when these
158 were condominiums. Mr. Cote said it was the storage and multi-use building. The office space
159 would be the 400 square foot area. The property is zoned residential. This doesn't have frontage
160 on Route 4. The larger building will remain as storage. Mr. Danaïs asked what it would be an
161 office for. Mr. Cote said maybe an artist or he is open to anyone. Mr. Frankiewicz said they will
162 go before the Planning Board again. Mr. Frankiewicz went over the five criteria relating to his
163 proposal. The inability to expand the septic system was one of the reasons that the town
164 inspector suggested using it as office space. There are nine bedrooms in the units.

165 Mr. Sylvia said he agrees with Mr. Frankiewicz. He did not believe it should not be a residential
166 use. He suggested revisiting the parking situation. It needs to be updated.

167 Mrs. Bascom asked if this was an office space for Mr. Cote. He said it's office space that will be
168 rented out.

169 **Public Comment**

170 There was no public comment. The case was closed.

171 **Mr. Danaïs made a motion to accept the application from Richard and Maryellen Cote for**
172 **a variance from Article II, Section (c) 1 to change the use of one unit to unspecified office.**
173 **The property is located at 18 Cooper Hill Road and is known as Tax Map 16, Lot 5. Mrs.**
174 **Bascom seconded. Unanimously approved by a vote of 5-0.**

175 *Case #21-010-VA Application from Matt Bergeron for a variance from Article II, Section (C)*
176 *3a, construction with less than 50-foot setback. The property at 8 Cahill Lane and is known as*
177 *Tax Map 68, Lot 49-1.*

178 Mr. Bergeron will be presenting. Mrs. Bascom read the letter from Chris Sterndale.

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Board Members:

I am writing to provide some background on the variance case before you from Matt Bergeron on Cahill Lane. This is an unusual case, brought about by unusual events and timing, that have created a situation for Mr. Bergeron requiring a variance.

With the adoption of warrant article #19 in 2021, Town Meeting accepted Cahill Lane as a Class V town road. This has created a host of legal questions, surprises, and practical obstacles for some residents and the town government. The Planning Board and Select Board have both been actively working to understand and adapt to these changes. Generally, the public has acquired easements that formerly belonged to a limited number of property owners; and those easements are located where roads are shown on approved plans.

The road vote took place in the midst of Mr. Bergeron's work on his property, and instantly changed the legal framework within which he has to operate. I expect his application and presentation to you will explain the particulars. In short, he is seeking setback relief from a street that is there on paper but not in reality. He had previously moved the actual road (then private), away from his home and from its original location shown on plans. Prior to the adoption of Article #19, this permit request would have been approved without concern for setbacks on the then-private road.

Mr. Bergeron's actions regarding the road have been with the full knowledge and consent of the town since 2019-2020. Town staff believe he has acted legally and in good faith throughout, trying to find solutions that work for his location and for the town, all while satisfying State DES regulations as well. We tried, but failed, to find a way to legally avoid a variance request. He, abutters, and staff have all agreed on a proposed solution that would make a variance moot, but this solution would require the approval of the Select Board and Town Meeting in 2022.

Please let me know if we can provide any additional information.

Sincerely,



Chris Sterndale

179

180 Mr. Bergeron said in 2022, he plans to ask the town to make the portion of Cahill Road with his
181 house and his father's a shared driveway with no town maintenance. That will take a town vote.
182 There are three lots on Cahill Road; he owns two and one is owned by his dad. He wanted to
183 move the road in 2019 when it was a private road. It was agreed by the town that since it was a
184 private road, he was able to move the road 250 feet so the road wasn't as close to his house. At
185 that same time, he was drawing up plans for an addition to his house. As of June 28, the road was
186 approved as town road, and he can't build within 50 feet of the road. He has the old Cahill Lane
187 and the lake on one side and can't build within 50 feet of both of these.

188 Mr. Bonser said before the vote, Mr. Bergeron could have asked to have his road removed from
189 the ballot. Mr. Bergeron said he voted for the road to be approved. No one asked him if he
190 wanted this portion of the road to be included in this vote; his primary residence was in another
191 town.

192 Ms. MacKinnon asked which is the town approved Cahill Lane: the old one or the new one.

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193 Mr. Bergeron said Chris Sterndale said when the town voted, they voted to approve the old
194 Cahill Lane because there was no recorded plan for the new one. With these setbacks, Mr.
195 Bergeron would be required to have 50-feet from the road and also 50-feet from the lake in order
196 to do anything to his land. The town is plowing the new Cahill Lane, not the old Cahill Lane.

197 Mr. Bergeron owns on both sides of the road that previously was all buildable and now is not.

198 Ms. MacKinnon asked if he will still pursue moving the road back to private at town meeting. He
199 said he would love to. He would like to create a turn around section for emergency vehicles and
200 have it turned back into a shared driveway.

201 Mr. Bergeron went over the five criteria how it relates to his case.

202 Mr. Danaïs asked if there are any further properties down the road besides his father's. Mr.
203 Bergeron said no. Mr. Danaïs asked if someone buys Mr. Bergeron's property, will they come
204 back asking for a variance. Mr. Bergeron said if his father has plans to do something with his
205 land, and they don't know where the road ends as it just goes to his house.

206 Mr. Sylvia said it's not his role to be in favor or not in favor of any of these cases. He said it's
207 hard not have to have an opinion on this case. He said he doesn't believe people understand what
208 they were voting on for Article 19. He had to deny Mr. Bergeron even though he didn't feel that
209 it was right to do so. He said Mr. Bergeron came to the town in good faith. Mr. Sylvia said it was
210 fine that Mr. Bergeron changed the road because it was on private property. They did not record
211 that they made that change which would not normally matter because it was not a town road;
212 however, now it was approved as a town road. Mr. Sylvia said they don't know where the road
213 ends on Cahill Lane. This is a hardship case. The old road is still there and that's what is
214 recorded as the road. Because the addition is next to the old road, Mr. Sylvia has no choice other
215 than to deny the addition.

216 Mr. Sylvia said they want to do the addition now. They are electing to apply for a variance now
217 and then in the future they will ask for that portion of Cahill Lane to be discontinued to be owned
218 by the town. It will have to be taken care of at a town meeting. It will be recorded then.

219 Mrs. Bascom asked how close is the old road to the proposed addition. The existing house is 24
220 feet away. The addition would be as close as 20 feet away.

221 Ms. MacKinnon asked who granted the new right away. She said you don't need to record things
222 by law. Mr. Sylvia said Mr. Bergeron is looking to cut off the access to old Cahill Lane. He can't
223 do that right now as the old Cahill Lane is the recorded road.

224 Mr. Sylvia said Mr. Bergeron doesn't have to use the old road but that is what is currently listed
225 as the town road.

226 Mrs. Bascom said the part Mr. Bergeron is building onto his house will be within 20 feet of the
227 old road. She asked should they be doing anything with a road that doesn't even exist.

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228 Mr. Sylvia said they should pretend the new road doesn't exist. The ask tonight is whether he can
229 build within the 50 feet for his addition. His house currently is also within the 50 feet as well.
230 The old road will continue to exist until the townspeople says it does not.

231 **Public Comment**

232 Mr. Morin said that several houses have less than the 50 feet setback and the Board should be
233 able to approve this. The hearing was closed at 9:26pm.

234 **Ms. MacKinnon made a motion to accept the application from Matt Bergeron for Case**
235 **#21-010-VA for a variance from Article II, Section (C) 3a, construction with less than 50-**
236 **foot setback. The property at 8 Cahill Lane and is known as Tax Map 68, Lot 49-1. Mrs.**
237 **Bascom seconded. It was approved by a vote of 4-1 with Mr. Bonser nay.**

238 **Select Board and Staff/Board Member Updates**

239 There were no updates.

240 **Approve Minutes**

241 They will hold off on minutes from 8-17-21.

242 **Adjourn**

243 **Mrs. Bascom made a motion to adjourn at 9:35pm. Ms. MacKinnon seconded.**
244 **Unanimously approved by a vote of 5-0.**

245

246