

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

August 20, 2019

Approved: October 15, 2019

Members Present: Bonnie Winona-MacKinnon, Chair; Teresa Bascom, vice-Chair; Terry Bonser; Peter White; Realene Shippee-Rice; Kevin Bassett, Alternate (arrived at:7:15)

Members Absent:

Others Present: JoAnna Arendarczyk, Land Use Clerk; Kathy & Walter Lewis, Residents; Marge Proia, Applicant; Tim Proia, Resident; Joe & Dawn Fernald, Applicants; BethAnn Schmitt, Resident; Brian Schmitt, Resident; Stephen & Tracy Bond, Applicants; David Finn, Resident; Celest Schmitt, Resident; Tom Duffy, Resident;

Call to order: 7:00pm

Public Hearing

Chair read the meeting procedure to the applicants.

Kevin Bassett who was seated for case #19-005-AA last month had notified the Board that he would be late. Therefore, the Chair decided to adjust the agenda and move the case to a later time to allow Kevin to vote on the case.

- *Case 19-006-VA-VA-VA- Application from Stephen T. and Tracy A. Bond, requesting three (3) Variances from the Nottingham Zoning Ordinance. Two (2) are from Article II Section C(2), to permit a septic 10.3 feet from the property line and a portion of the dwelling 9.3 feet from the property line where 20 feet is required. One (1) Variance request is from Article II Section C(1)(a) to permit the replacement of a seasonal dwelling with a year-round dwelling with 50 feet of access on a private road and a non-conforming lot. The property is located at 33 Lakeview Drive in Nottingham, NH and is identified as Tax Map 71 Lot 69.*

Mr. Stephen Bond, applicant and owner of the property at 33 Lake View Drive presented his case. He read the description of his building permit application that was denied (file).

To follow through with the plan three (3) variances need to be approved. He read the responses to the Variance application criteria.

He explained that there isn't a septic plan in the packet because a Variance is needed to allow for one.

The Board asked for the applicant to help them to identify where the proposed system would be placed.

Ms. MacKinnon noted for the record that the abutter Mr. Romano wrote a letter expressing acceptance to the proposed vicinity of the septic (file).

Mr. Bond read the application criteria responses for the proposed addition portion of the newly constructed dwelling.

The Board discussed whether this variance request is really needed; they continued the hearing not certain.

Mr. Bond continued with the final request. Stating that it is an existing lot though not currently year-round.

Public Comment: No one came forward.

Motion Made By: Mrs. Bascom to approve the requests for **Case 19-006-VA-VA-VA-** Application from Stephen T. and Tracy A. Bond, for their 3 variances to permit a septic 10.3 feet from the property line and a portion of the dwelling 9.3 feet from the property line where 20 feet

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is required. And to permit the replacement of a seasonal dwelling with a year-round dwelling with 50 feet of access on a private road and a non-conforming lot.

Seconded By: Ms. Shippee-Rice

The Board agreed to vote the criteria based on the three requests:

	Criteria Summary	Board vote - was the Criteria met?
1.	Granting the variance would not be contrary to the public interest because:	4-0-0
2.	If the Variance were granted, the spirit of the ordinance would be observed because:	4-0-0
3.	Granting the variance would do substantial justice because:	4-0-0
4.	If the variance is granted, the values of the surrounding properties would not be diminished because:	4-0-0
5.	Unnecessary Hardship a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: 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 because: ii. The proposed use is a reasonable one because:	4-0-0

Vote: 4-0-0 **Motion Passed**

The applicant was advised that there is a 30 day appeal period.

Public Hearing Closed: 7:34pm

Kevin Basset seated 7:35 pm- Ms. Shippee-Rice stepped down for the following case

- Continued Case 19-005-AA-** *Application from Joe and Dawn Fernald, requesting an Appeal to an Administrative Decision made by the Building Inspector on June 20, 2019. The decision is in regards to enforcement of the Zoning Ordinance Article IV Section W.9a &b The properties are located on Raymond Road in Nottingham NH and are identified as Tax Map 64 Lot1 and Lot 1 Sub 5 and Tax Map 66 Lot 1 Sub 3 and Lot1 Sub 4.*

Ms. MacKinnon explained that the case was continued to allow the Board time to seek legal advice on the case due to the unique nature of the case. The legal advice recommended the application be heard by the Planning Board as a Waiver Request.

Motion Made By: Mr. Basset to continue case #19-005-AA so the applicant can make their case to the Planning Board

Seconded By: Mrs. Bascom

Discussion: Discussion as to the method of “continuing”: the case, as it means the case is still open before the Zoning Board of Adjustment. The Chair stated she was told by the Town Administrator to “Continue the case” but is not sure if it is to be heard again after the Planning Board hears the case. The Land Use Clerk will investigate this issue.

Mrs. Fernald noted that she had initially applied for a Waiver Request to the Planning Board and was told that she needed to apply for an Administrative Appeal to the ZBA. Due to the clerical error she asked if she would be able to have a refund for the fees she paid, if she wasn’t misdirected, she wouldn’t have had any fees to pay for. The Chair stated that the Land Use Clerk could see to that possibility.

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Vote: 5-0-0 Motion Passed

Hearing Continued to the Planning Board: 7:43 pm

Mr. Bassett left and Ms. Shippee Rice was reseated

- **Case 19-007-VA-** Application from Marjorie Proia requesting a Variance from Article II Section C2 of the Nottingham Zoning Ordinance to permit approval of replacement/upgraded septic system design/ plan with 9ft setback where 20ft is required. The property is located at 20 Tuckaway Shores Rd. in Nottingham, NH and is identified as Tax Map 70 Lot 48.

Marjorie Proia presented her case. She noted one error on the application; the 9ft setback should be 8ft. The Board agreed to continue hearing the case as the error is minor. Ms. Proia continued her presentation addressing the criteria in the application.

The application also identified the Easement being filed at the Rochester County Registry of Deeds; this is also an error as it should be the Rockingham County Registry of Deeds.

The septic plan is only valid for two (2) years. The applicant informed the Board that the request is for the sale of the home based on the buyer's request to have the plan ready in case the need arises.

Public Comment:

Mr. Duffy the Real-estate agent who listed the property that is currently under agreement. Mr. Duffy spoke directly to Mr. Bonser (Board member and Septic Designer) to confirm that a back-up plan in case the current system failed in the winter, is a good plan. Mr. Bonser concurred. Mr. & Ms. Schmitt- 22 Tuckaway Shore- Asked questions regarding the design and the vicinity to their property. They were also concerned about possible blasting for installation. The applicant said there wouldn't be any. The Schmitt's had no further concerns and agreed with the improvements.

Public Comment Closed: 7:58pm

Mrs. Bascom confirmed with Mr. Bonser that approving less than the States requirement of ten (10) feet is acceptable. Mr. Bonser said that after the Town approves it the applicant will then seek a Variance from the State.

Motion Made By: Mrs. Bascom to approve the request for **Case 19-007-VA-** as written on the agenda.

Seconded By: Ms. Shippee-Rice

	Criteria Summary	Board vote - was the Criteria met?
1.	Granting the variance would not be contrary to the public interest because:	4-0-0
2.	If the Variance were granted, the spirit of the ordinance would be observed because:	4-0-0
3.	Granting the variance would do substantial justice because:	4-0-0
4.	If the variance is granted, the values of the surrounding properties would not be diminished because:	4-0-0
5.	Unnecessary Hardship <ul style="list-style-type: none">a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:i. No fair and substantial relationship exists between the general public	4-0-0

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	purposes of the ordinance provision and the specific application of that provision to the property because: ii. The proposed use is a reasonable one because:	
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Vote: 4-0-0 Motion Passed

The applicant was advised that there is a 30 day appeal period.

Public Hearing Closed: 8:03pm

Staff/ Board Members Update

Mrs. Arendarczyk addressed an issue with the Board that Variance cases for Article II.C.2 should be a Special Exception cases due to the fact that the Zoning Ordinance states the reliefs should be Special Exceptions. After some discussion and clarification, the Board agreed to hear the cases as Special Exceptions in the future.

Minutes

May 21, 2019

Motion Made By: Mrs. Bascom to approve the May 21, 2019 minutes as amended.

Seconded By: Ms. Shippee-Rice

Vote: 5-0-0 Motion Passed

July 16, 2019- Tabled for further editing

ADJOURNMENT

Motion Made By: Mrs. Bascom

Seconded By: Mr. White

Vote: 5-0-0 Motion Passed

Adjourn at: 8:25pm

For the Nottingham Zoning Board of Adjustment

JoAnna Arendarczyk; Land Use Clerk