

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

September 17, 2019

1 *Approved: November 19, 2019*

2 **Members Present:** Bonnie Winona-MacKinnon, Chair; Teresa Bascom, vice-Chair; Terry
3 Bonser; Peter White

4 **Members Absent:** Realene Shippee-Rice; Kevin Bassett, Alternate

5 **Others Present:** JoAnna Arendarczyk, Land Use Clerk; Tom Duffy, Applicant; Walter & Kathy
6 Lewis, Abutters; Peter Landry, Surveyor for applicant; Anne & Bill Noeth, Abutters; Tom
7 Duffy, Applicant; John Morin, Resident; Chris Evans, Resident

8 **Call to order:** 7:00pm

9

- 10 • The Chair noted a full Board was not present. The applicants were offered the
11 opportunity to table their hearings to another night when a full Board could be present.
12 • The Chair read the meeting procedure to the applicants.

13

14 **Public Hearings**

15 *Case 19-008-VA-VA- Application from Thomas Duffy requesting two Variances from the*
16 *Nottingham Zoning Ordinance. One Variance request from Article II Section C.1(a) to permit*
17 *construction of a property with less than 200ft. of frontage on a class V road or better (there is*
18 *204.3ft of frontage on a private road). The second Variance request is from Article II Section*
19 *C.2 to permit construction of a septic system 10ft. from the setback on a non-conforming lot*
20 *where 20ft. is required (meets state requirement of 10ft). The property is located on Cove Road*
21 *in Nottingham, NH and is identified as Tax Map 68 Lot 65.*

22 Mr. Duffy chose to continue with his Public Hearing without a full Board. He presented the
23 required criteria as noted in his application.

24 The Board heard both Variance requests before deliberating.

25 Mr. Duffy stated he anticipated constructing a two story or possibly a story and a half cape and a
26 two (2) car garage if he is granted approval for the Variance requests.

27 **Public Hearing Opened:** 7:18pm

28 Kathy Lewis- abutter: Ms. Lewis expressed concern regarding the vicinity of their personal
29 septic to the location of the applicants proposed new septic, well and dwelling. The Board
30 informed her that the state of NH scrutinizes the applications for septic systems especially those
31 near the lakes. Ms. Lewis added that she is also concerned about fitting a two-bedroom home
32 and a two-car garage on such a small lot.

33 Bill Noeth- abutter: Mr. Noeth expressed concerned regarding run off into the lake due to the
34 hill and condition of Cove Rd and the added impervious area and removal of vegetation.

35 **Rebuttals:** Mr. Duffy informed the abutters and the Board that he is within the 75' radius as is
36 required for the septic. He expressed that he feels he is proposing the best possible options
37 within the lot constraints. As to the run-off concern silt fences will be used to contain the run-off
38 and best practices will be observed.

39 Mr. White asked if a waiver for the well radius on the abutting property would be required. Mr.
40 Duffy responded that it would not be required to his knowledge.

41 Mr. Bonser asked if a foundation or slab would be constructed. Mr. Duffy stated that would be
42 determined later due to the fact that he hit ledge in a few locations when digging the test pits
43 which is why only two test pits were noted on the plan.

44 Ms. Lewis added further concern in response to the ledge comment as she fears the amount of
45 tree removal needed to build and the fact that there is a large amount of ledge on the property
46 would therefore increase the runoff issue. She stated "I strongly do not approve..."

For the Nottingham Zoning Board of Adjustment ~ JoAnna Arendarczyk; Land Use Clerk

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47 Chris Evans- 8 Tuckaway Shore- Introduced himself as the new owner of a couple neighboring
 48 lots which he is planning to build on. He stated that he just secured approval from the
 49 Department of Environmental Services, which was difficult to achieve due to the process. He
 50 stated the process involved an in-depth review of the land as well as the amount of tree removal
 51 required for the construction. He is in favor of Mr. Duffy’s request as he deems the States
 52 process assures best practices will be followed and the care for the land and environment is
 53 tracked carefully.

54 Ms. Lewis commented that all the houses on Cove Road are similar in size to her home. All
 55 trees will have to be removed and will affect the watershed into Pawtuckaway lake.

56 Mr. Duffy stated that probably 50% of the trees on the lot will need to be removed for
 57 construction. He also noted that he received a shoreland permit about a week ago conditional on
 58 septic approval.

59 **Public Hearing Closed: 7:52pm**

60 Ms. MacKinnon restated the Public Hearing notice.

61 Board members expressed concern regarding the crowding of homes on small lots. However
 62 they noted that the Shoreland Permit has been received so the state is aware of the proposed
 63 construction and approve of it.

64 Ms. MacKinnon informed the public how the criteria guide the vote which is what governs the
 65 direction of the vote to approve or deny.

66 The Board voted on the criteria based on the request for the 200’ of road frontage:

	Criteria Summary	Board vote - was the Criteria met?
1.	Granting the variance would not be contrary to the public interest because: _	2-1-1
2.	If the Variance were granted, the spirit of the ordinance would be observed because:	3-0-1
3.	Granting the variance would do substantial justice because:	2-1-1
4.	If the variance is granted, the values of the surrounding properties would not be diminished because:	3-0-1
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: b. Explain how, 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.	i. 3-0-1 ii. 2-1-1 b. 3-0-1

67 Ms. MacKinnon requested the Land Use Clerk read the vote tally for the criteria. The Land Use
 68 Clerk stated that she is pretty sure all the criteria passed due to the abstention vote going in favor
 69 not against.

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70 Mr. White expressed he abstained due to the history of the Board approving cases with similar
71 concerns.

72 Ms. MacKinnon stated that the final motion will be made after the criteria is voted on for both
73 Variances.

74
75 The Board voted the criteria based on the request for the Septic Setback:

	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: b. Explain how, 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.	i. 4-0-0 ii. 3-1-0 b. 4-0-0

76 Ms. MacKinnon requested the Land Use Clerk read the vote tally for the criteria for this request
77 as well. The Land Use Clerk stated that all the criteria passed for this request.

78 Ms. MacKinnon informed Mr. Duffy that his Variance requests were granted. He was also
79 informed that there is a 30-day appeal window.

80 Mr. Duffy and the public present for his case left the conference room.

81 The Land Use Clerk noted that a formal motion had not been made and the case had not been
82 closed.

83 **Motion Made By:** Ms. MacKinnon “on Case 19-008-VA-VA- Application from Thomas Duffy
84 requesting two Variances from the Nottingham Zoning Ordinance. One Variance request from
85 Article II Section C.1(a) to permit construction of a property with less than 200ft. of frontage on
86 a class V road or better (there is 204.3ft of frontage on a private road). The second Variance
87 request is from Article II Section C.2 to permit construction of a septic system 10ft. from the
88 setback on a non-conforming lot where 20ft. is required (meets state requirement of 10ft). The
89 property is located on Cove Road in Nottingham, NH and is identified as Tax Map 68 Lot 65.
90 Was approved by the Board through a vote on the five criteria individually.”

91 **Seconded By:** Mr. Bonser

92 **Vote:** 3-0-1 **Motion Passed**

93 **Case Closed:** 8:14pm

94

95 **Public Hearing Opened:** 8:19pm

For the Nottingham Zoning Board of Adjustment ~ JoAnna Arendarczyk; Land Use Clerk

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96 *Case 19-009-SE- Application from Jay P. and Sandy M. Shehan Trustees of the Jay and Sandy*
97 *Shehan Family Trust requesting a Special Exception to Article II Section C.2 of the Nottingham*
98 *Zoning Ordinance to permit the replacement of an existing septic system with a new, modern*
99 *system ten (10) feet from the property line where 20 feet is required (meets state requirement of*
100 *10ft). The property is located at 10 Tuckaway Shores Road in Nottingham, NH and is identified*
101 *as Tax Map 70 Lot 36.*

102 Surveyor, Peter Landry, represented the Shehan’s who could not attend. He reviewed the
103 information submitted in the application “Narrative” (file). He stated that a three-bedroom septic
104 is being proposed to allow for a third bedroom, should that be needed/desired in the future. Mr.
105 Landry read the responses to the three criteria in the application (file) noting the closest well to
106 the septic is the applicants which 75’ away.

107 The Board learned that the current system isn’t up to code, this new one would be considered an
108 upgrade. One test pit and one perk tests were done and noted.

109 **Public Comment Opened:** 8:33pm

110 Chris Evans spoke in favor of the plan stating that he doesn’t see any concerns.

111 **Public Comment Closed:** 8:34pm

Criteria 1 – whether the goal set forth in NH RSA 674:17 I. will be infringed by granting such special exception;	Vote: 0-4-0
Criteria 2 – whether the terrain or configuration of the lot make it more appropriate than not for such a special exception to be granted;	Vote: 4-0-0
Criteria 3 – whether the granting of such special exception would adversely impact the neighboring parcels or rural character of the Town.	Vote: 0-4-0

112 **Motion Made By:** Mrs. Bascom to approve the case as written having met all three criteria.

113 **Seconded By:** Mr. Bonser

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

115 **Public Hearing Closed:** 8:40pm

116

117 **Staff/ Board Members Update**

118 The Land Use Clerk reminded the Board of the upcoming joint meeting with the Planning Board.

119 The Board requested the Clerk to send a summary of the kinds of ZBA meeting cases.

120

121 **Minutes**

122 July 16, 2019

123 **Motion Made By:** Mrs. Bascom to approve the July 16, 2019 minutes as amended.

124 **Seconded By:** Ms. MacKinnon

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

126

127 **ADJOURNMENT**

128 **Motion Made By:** Mrs. Bascom

129 **Seconded By:** Mr. Bonser

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

131 **Adjourn at:** 8:52 pm