

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

October 15, 2019

Approved: January 21, 2020

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

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

Others Present: JoAnna Arendarczyk, Land Use Clerk; Gary Potavin, Abutter; Patricia Mattie, Applicant; Gary Anderson, Applicant Assistant

Meeting opened: 7:00pm

- The Chair noted a full Board was not present. The applicants were offered the opportunity to table their hearings to another night when a full Board could be present.

Public Hearings

Case 19-010-VA-VA- *Application from Christopher Evans on behalf of the current owners, Steven Musial and Dania Jackson for two (2) Variance requests from Article II Section C.1(a) of the Nottingham Zoning Ordinance. One request is to permit construction of a single-family dwelling on a non-conforming lot of record, Map 70 Lot 30, which meets all zoning criteria except the lot has 200 feet of frontage (noncontiguous) on a private road; not class V or better as provided in the definitions for "frontage". The second request is to permit construction of a single-family dwelling on a non-conforming lot of record, Map 70 Lot 31, which meets all zoning criteria except the lots has 200 feet minimum frontage on a private road; not class V or better as provided in the definitions for "frontage". The properties are located on Tuckaway Shores Road in Nottingham, NH and are identified as Tax Map 70 Lots 30&31.*

- The Chair read the meeting procedure to the applicants.

Mr. Evans stated that he would cover most issues of the properties as one however, there are certain issues that are different with each one and he will address those issues separately when they apply. Mr. Evans spoke to the history of the two lots, which he just purchased from Steven Musial and Dania Jackson. He submitted his Deeds to show current ownership (file). Mr. White expressed concern of the application showing the previous owners names. Mr. Bonser, Ms. MacKinnon, and Mrs. Bascom each expressed that since the application notes that Mr. Evans was applicant on behalf of the, then owners, there is no concern.

Mr. Evans continued his presentation of the information in the case file. He noted that the Selectman recently voted to continue to treat the road as an Emergency Lane. Without the Variance the use of a single-family dwelling on the lot is restricted. He added that the 100% of the lots on the road would not be there if the current zoning was applied to them before they were built. Lot 30 is different only in that its "frontage" is 100ft in the front and 100ft in the back.

Ms. MacKinnon determined Mr. Evans had "equitable interest" in the property at the time the application was filed as he had a Purchase and Sales Agreement. A copy of the first and last page was provided (file).

Test pits were completed, and septic designs have been designed by state standards. Drainage issues on the properties were identified and all issues have plans to mitigate further problems. He does not plan to clear cut the lot.

Mr. White stated that he doesn't see how there is a hardship when Mr. Evans is living in one of the existing lots of the 3 he purchased.

Mr. Evans expressed that his hardship is about the right to build on a private road, not that he "needs" a place to live.

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Mr. White stated that the ZBA's job is to protect the lake and surrounding properties not a person's private rights.

Mr. Evans noted that reasonable standards to build will be practiced.

Mr. White can't see how two single family dwellings can be built without impacting the surrounding areas. Septics are one of the specific concerns, to which Mr. Bonser noted that septic leach goes down due to gravity.

Public Hearing Opened: 7:47pm

Mr. Potavin informed the Board that he had installed gutters, drywells and curbing to direct the runoff to a wetland area due to his property being one of several that created a runoff issue in the area. He is concerned about two more dwellings on the higher elevation. However, he knows measures can be taken to mitigate the concerns.

Public Hearing Closed: 7:51pm

Mr. White expressed that he believes a site visit would be appropriate. However, the other Board members did not feel it was necessary with this case. They do agree that site walks are important for many of the cases though.

Mr. Evans noted that a DES application has not been submitted due to the lot disturbance will be out of the Shoreland Protection Zone.

Motion Made By: Mrs. Bascom to approve Case 19-010-VA-VA- Application from Christopher Evans to approve the Variance request from Article II Section C.1(a) of the Nottingham Zoning Ordinance to permit construction of a single-family dwelling on a two non-conforming lots; Map 70 Lot 30 and Lot 31.

Conditions: Subject to installation of drywells, gutters, and best practices for storm drainage for driveways and area of lots disturbed during construction.

Seconded By: Mr. Bonser

The Board voted the criteria based on the request for both Lot 30 and Lot 31

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

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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:<ul style="list-style-type: none">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.	a. 3-1-0 b. 3-1-0
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Vote: 3-1-0 Motion Approved

Case Closed: 8:00pm

Case 19-011-VA Application from Thomas and Patricia Mattie for a Variance request from Article III(B)(2) of the Nottingham Zoning Ordinance. To permit an Accessory Dwelling Unit in an existing home within 50 feet of poorly drained soil. The property is located at 8 Michela Way in Nottingham, NH and is identified as Tax Map 49 Lots 19 Sublot 18. (Map error on Public Hearing Notice and Building Inspector Denial letter- Map 42 is the correct Map)

Mrs. Arendarczyk noted that all abutters were legally notified, and no abutters are present for the hearing.

Mr. Anderson, owner of Gary Anderson Home Improvement LLC., is the contracted builder for the proposed project and is representing the case with home owner Patricia Mattie. Mr. Anderson supplied the late submittal, survey of the property. The proposed Accessory Dwelling Unit (ADU) would be 37.88ft from the wetland. The surveyor explained to the applicant and builder, that the wetland is due to the low area however it is dry most of the year.

Ms. Mattie said she notices the area gets wet when the snow is melting.

Mr. White asked Ms. Mattie why she is requesting an ADU. Ms. Mattie replied that the ADU is for her mother and would allow her to be closer as he ages.

When Ms. Mattie was asked by Mrs. Bascom asked if any other disturbance would be needed, ie. a septic or a well she stated there wouldn't be any other disturbances.

Ms. Mattie read the responses to the criteria (file), noting that the the poorly drained area would not be disturbed during construction. Roscoe Blaisdell (Surveyor and Wetland Scientist) did not find any wetland creatures or any wetland plants in the poorly drained area.

Public Hearing Closed: 8:15pm

Motion Made By: Mrs. Bascom to approve request for Case 19-011-VA Application from Thomas and Patricia Mattie for a Variance request from Article III(B)(2) of the Nottingham Zoning Ordinance. To permit an Accessory Dwelling Unit in an existing home within 50 feet of poorly drained soil at 8 Michela Way.

Seconded By: Mr. White

The Board voted the criteria based on the request:

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	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: <ul style="list-style-type: none"> 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. 	a. 4-0-0

Vote: 4-0-0 Motion Passed

Applicant was informed that there is a 45-day appeal period.

Hearing closed: 8:19pm

Staff/ Board Members Update

The Land Use Clerk:

- The joint meeting went well. Proposed changes to the Zoning Ordinance are in process.
- Other applications coming keep an eye on email

Minutes

August 20, 2019

Motion Made By: Mrs. Bascom to approve the August 20, 2019 minutes as amended.

Seconded By: Mr. White

Vote: 4-0-0 Motion Passed

Mr. White informed the Board about the ZBA training he attended. He noted that he was informed of the appropriate reasons for abstaining at the meeting. He also learned that documents MUST be accurate. He is concerned about the subject of hardship as well and how the Board addresses the public interest, property values etc. He stated that he will vote "NO" if

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123 he thinks a project could harm the health and wellbeing of the public or environment. He stated
124 that in his opinion the Board approves many of the cases with "No scrutiny".
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126 **ADJOURNMENT**

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

128 **Seconded By:** Mr. Bonser

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

130 **Adjourn at:** 8:33 pm