

# NOTTINGHAM ZONING BOARD OF ADJUSTMENT

December 15, 2020

*Approved: January 19, 2021*

**Members Present:** Bonnie Winona MacKinnon, Chair; Teresa Bascom, Vice-chair; Terry Bonser; Raelene Shippee-Rice; Kevin Bassett, Alternate

**Members Absent:** Peter White;

**Others Present:** JoAnna Arendarczyk, Land Use Clerk; Christopher R. Berry; Berry Surveying; James Gove, Gove Environmental Services, Wetland Scientist; Justin Pasay, Lawyer- DTC Lawyers; Joe Falzone, Developer; Alex Monastier, Real estate Agent; Scott Cole, Engineer-Beals Associates

**Abutters/ Residents Present:** Stephen Curwood; Deb Wallace; Patricia & Don Roix; Dennis Buck; Linda Morrisette; R. Robins; Diana Arsenault; Rich & Carrie Pasco

**Call to order:** 7:01pm

**Alternate Seated and Voting:** Kevin Bassett for Peter White

*In anticipation of the extension of Executive Order 2020-17, the Nottingham Zoning Board will be holding a virtual hearing. Access to the meeting is given through Zoom. All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in the meeting.*

## **Public Hearings**

- ***Continued from November 17, 2020- Case 20-014-VA- Application from Robert Diberto requesting a Variance from Article III Section B.4 of the Nottingham Zoning Ordinance to permit filling 6,717 SF of a PF01/4eg wetland as part of the road construction for a proposed subdivision. The property is located on Mitchell Road in Nottingham, NH and is identified as Tax Map 7 Lot 1 Sublot N.***

***(Italics notes Public Hearing Notice language as sent to abutters and the Union Leader)***

The Chair mentioned the Site Walk that was held on November 25, 2020 (See File for Notice and Minutes).

Mr. Berry, surveyor, shared his screen to allow meeting participants to see the plan and reminded the Board and residents that the case before them is only a request for relief of the Wetland impacts not for the project in totality.

The Chair stated that she found that the Site Walk was very informative and educational. The reason behind the decision to install a loop road versus cul-de-sacs is due to less impervious impact per the decisions of the Conservation Commission and the Planning Board.

Mr. Bassett shared his findings from the Site Walk- He found that all the flow is underground, the impact will be minimal, and he will be in favor of the request.

**Public Comment:** Stephen Curwood requested to view the Site Walk minutes as he was unaware of the Site Walk being scheduled. (The Land Use Clerk emailed the draft minutes to Mr. Curwood, Danny Arseneault and Dennis and Jennifer Buck as requested during the meeting) The Board stated that the Site Walk was posted as legally required on the Town Bulletin Board and Web page. Though the date was not chosen during the meeting it was mentioned that one would be scheduled via e-mail between the applicant and Board members. Therefore, members of the public were to stay tuned to the website or bulletin board.

Mr. Curwood asked if the Town hired an outside professional to review the site. The Chair replied that the Board had not.

Mr. Curwood commented that there are vernal pools on the site. The Chair stated that those are not in the Boards jurisdiction. Mr. Curwood countered that they are indeed in the Boards jurisdiction and that he is concerned that the Town has not sought their own expert advice.

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

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Mr. Curwood asked where the “spoils” are going from the project and asked if the DES application had been filed. Mr. Berry stated that the “spoils” would be placed on site for dewatering and then reused in areas where fill would be needed. He also stated that the DES application is available at the Town Office. Mr. Curwood requested that the application be sent to him.

Mr. Curwood stated that the applicant supplied the hardship being that of a money issue. Mr. Berry countered that money was not mentioned, he simply stated the fact that the project cannot be done without the relief being given.

**Public Hearing Closed:** 7:38pm

**Motion Made by:** Mrs. Bascom to approve case # 20-14-VA application from Robert Diberto requesting a Variance from Article III Section B.4 of the Nottingham Zoning Ordinance to permit filling 6,717 SF of a PF01/4eg wetland as part of the road construction for a proposed subdivision. As requested.

**Seconded by:** Mr. Bonser

**Roll Call Vote:** 4-0-1 **Motion Passed**

Winona MacKinnon- Y	Bascom- Y	Bassett- Y
Bonser- Y	Shippee- Rice- Abstain- Not available for Site Walk	

The Chair advised the applicant of the 30-day appeal window.

**Case Closed:** 7:42 pm

- Case 20-016-VA- Application from Joseph Falzone requesting a Variance from Article III Section B.4 of the Nottingham Zoning Ordinance to permit wetland crossing on approximately 3,000 square ft to access lots 2,4,5 & 6 for a proposed subdivision. The property is located on Gile Road in Nottingham, NH and is identified as Tax Map 40 Lot 1.*

Scott Cole, Engineer, joined the meeting at 7:45pm

Mrs. Bascom noted that the application and Public Hearing notice identifies lots 2,4,5 & 6, however, the plan shows 3 & 7 being affected as well.

Justin Pasay, Lawyer, stated that was an oversight and can be fixed. He shared his screen and gave a history of the plans presented stating that the 14 lot Design Review that was presented before the Board would not require a Variance. However, the Planning Board and the Conservation Commission (comment in file) voted on the 7 Lot design because it involved less impact to the land and the municipal infrastructure. Mr. Pasay added that the caveat is if the Variance is denied the Mr. Falzone will apply for the 14 lot subdivision plan.

James Gove, Wetland Scientist, supplied the information regarding the benefits of the proposed Eco-passages that would be installed for the wetland crossings (information in file). He stated that they essentially would not be impacting the wetlands due to the size and type of crossings being installed. The specific eco-passage presented in the packet may not be the exact one installed but one like it will be designed specifically for each crossing. Mr. Gove when asked to describe the sites, stated that they are low points and wet but shallow. On average, they are dry nine (9) months out of the year. The passages will function as a culvert and eco-passage that will flush themselves out in most cases but can easily be manually cleaned by the landowner if necessary. The Board asked how this would be enforced. Mr. Falzone stated it would be outlined in the Easements and Deeds which are supplied at the Planning Board level. He also stated that the driveways would be paved up to the crossings but may not be completely paved. Mr. Pasay summarized the responses to the five (5) Criteria (file)

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Board members commented that the “threat” that a denial would lead to the 14-lot development was unnecessary. Mr. Pasay replied that “it was a failed attempt at transparency” but he appreciated the feedback.

## **Public Comment:**

Carrie Pasco expressed appreciation for the detailed Site Walk and asked what prevents the Eco-passages from sinking. She was informed that they will have footings below the frost level.

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

Mr. Bassett stated that he is choosing to abstain due to not attending the site walk.

**Motion Made by:** Mrs. Bascom to accept the application for **Case 20-016-VA-** Application from Joseph Falzone requesting a Variance from Article III Section B.4 of the Nottingham Zoning Ordinance to permit wetland crossing on approximately 3,000 square ft to access lots 2,4,5 & 6 for a proposed subdivision, as requested and with the following conditions.

1. Eco-crossings be used at the sections stated for lots 2,3,4,5,6&7

2. Deed restriction is noted for lot 7 preventing further development

**Seconded by:** Mr. Bonser

## **Roll Call Vote: 4-0-1 Motion Passed**

Winona MacKinnon- Y	Bascom- Y	Bassett-Abstain
Bonser- Y	Shippee- Rice- Y	

**Case Closed: 8:45pm**

## **Staff/ Board Members Update-**

The Land Use Clerk informed the Board of some edits that were needed on the 2021 Meeting and Application Deadline Schedule. Those edits were approved.

## **Minutes**

- October 20, 2020
- November 17, 2020
- November 25, 2020

**Motion Made By:** Mrs. Bascom to approve all the listed minutes as edited

**Seconded By:** Mr. Bonser

## **Roll Call Vote:**

Winona MacKinnon- Y	Bascom- Y	Bassett-Abstain
Bonser- Y	Shippee- Rice- Abstain	

The members abstained due to not being at all the meetings listed.

Mrs. Bascom left the meeting at 8:52pm

## **ADJOURNMENT**

**Motion Made By:** Mr. Bonser

**Seconded By:** Ms. Shippee- Rice

## **Roll Call Vote:**

Winona MacKinnon- Y	Shippee- Rice-Y
Bonser- Y	Bassett- Y

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

**Adjourn at: 8:53pm**