

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

August 21, 2018

1 *Approved: September 18, 2018*

2 **Members Present:** Bonnie Winona-MacKinnon, Vice- Chair; Mike Russo, Chair; Teresa
3 Bascom; Terry Bonser; Peter White; Kevin Bassett, Alternate

4 **Members Absent:** Kathy Bowse, Alternate;

5 **Others Present:** JoAnna Arendarczyk, Land Use Clerk; Jim Schulte, Attorney; Sam Demeritt,
6 Abutter, NCC Chair; Roscoe Blaisdell, Land Surveyor; Peter C. Loeser, Applicant; Mark H.
7 Puffer, Applicant's Attorney; Dennis & Bertha Fowler, Applicants; Jeffrey & Marilyn Cole,
8 Applicant's; Debora McLaughlin, Abutter; Deanne Fowler, Abutter; Melissa Reynolds, Abutter;
9 Peggy Weisman, Abutter; Nan Vigars, Abutter;

10
11 **Call to order:** 7:00pm

12 13 **Public Hearing**

14 • **Case 18-005-VA (Continuation)**

15 Application from Peter Loeser and Joy V. Riddell, requesting a Variance from Article II Section
16 C:1(a) of the Nottingham Zoning Ordinance, to permit an addition, large equipment storage shed
17 and ADU/garage on a private road. The property is located at 53 White's Grove Road in
18 Nottingham, NH and is identified as Tax Map 63 Lot 81.

19 **Alternate Seated and Voting:** Kevin Bassett for Peter White (recused- abutter to the applicants)
20 Attorney, Mark Puffer represented his client, Mr. Loeser- having read the minutes from the
21 previous hearing he stated that it's clear the variance request is due to the lot not having frontage
22 on a class V or better road. The question is what the effect would be in allowing this permitted
23 use on a private road. The issue with the Deed restriction have no effect on the variance, they
24 are a civil matter. Deed restrictions reflect what is in the Zoning Ordinance at the time the Deed
25 was written. Access rights is a matter for the residents to figure out it is not an issue on the
26 variance request. Mr. Puffer stated that there is an estimate of about 40 houses in the area of
27 White's Grove Road and there will not be an increase in the number with this approval. The
28 proposed garage is in an allowed location if it were a class V road so there should not be any
29 question on the effect of this use on the private road. Mr. Puffer reviewed the variance
30 application criteria as outlined in the newly submitted variance application (file).

31 **Board questions/comments:**

32 It was confirmed that the current house is able to be used as a year round dwelling. The proposal
33 would add about 5,200sf plus the garage which is about another 1,000sf. The applicant and his
34 attorney argued that though it would be larger than some it would not be unique, however it is a
35 use that is allowed as a matter of right. He stated that the proposed use is not a reasonable one
36 because it would not be similar in size with the other dwellings. Furthermore the proposed ADU
37 (calculated by Mr. Russo is 31'x26'=806sf) is larger than the allowed 750sf. The applicant
38 stated that he was not aware the size was too large. Mr. Bonser pointed out that the Building
39 Inspector wouldn't permit an ADU above the allowed 750sf. However due to the plan before the
40 Board the size submitted is what would be approved. Mr. Bonser stated that the size change
41 could be part of the conditional approval.

42 Mr. Chairman pointed out that low impact development criteria were not applied to the new
43 submittal per request from the previous meeting. However Mr. Bonser informed the Board that
44 the required Shoreland permit would cover that criteria and the Building Inspector sees that it is
45 enforced.

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Public Comments:

No abutters in favor came forward

Attorney, Jim Schulte and his client, abutter (Lot 71), Peggy Weisman gave their comments:

They agreed, that in their opinion, the proposal is not a small expansion, the building is effectively being tripled in size. The proposed expansion would reduce the trees separating Peggy's home from the applicants which is about 120ft apart currently. The impact to neighboring properties has not been proven- a real estate agent could have been brought in to attest to this. The presented hardship (private road) is not substantial and doesn't distinguish it from other properties which is clear to the applicant as it is stated in the application. The Fire Chief's previous letter stated that they do not suggest permitting development on private roads the new letter only talks about driveways. The attorney proposed reducing the size and location of the proposed additions. He also stated the blocked off section of the "road" is a public and private matter. Reinstating that blocked off section could be reasonably imposed on the applicant. In closing the attorney stated that the ZBA is being asked to approve specific plans which don't meet the requirements.

Mrs. Bascom pointed out that the plans are not to be approved/ denied by the ZBA that is for the Building department or Planning Boards depending on the case. People have a right to improve their homes as long as they are not harming people or the environment.

Mr. Schulte stated that the applicant has not presented evidence that the proposal will not harm the value of the neighbor's homes.

Mrs. Bascom countered that the applicant has shown that he is improving the current home which would in effect improve the value of the surrounding area.

Mr. Bonser stated that the case is for a variance on a private road therefore it is not necessary to prove the impact on the values of the neighbor's homes.

Ms. Mackinnon disagreed because it is the burden of the applicant to provide evidence that the request is reasonable and will not harm the environment or the community.

After some discussion regarding a concern of height it was determined to not be an issue due to the location of the homes. The views of the lake would not be affected by the second level.

Five Minute Recess: 8:01pm

Reconvened: 8:07pm

Deborah McLaughlin presented a list of properties and home sizes in the immediate area as a reference to what sizes are currently around the applicant's property. She also showed the Board a photo of a stake in the ground that indicated the end of the proposed garage, this could be shifted back a bit to alleviate the issue of how close it is to the abutter's property line.

Ms. MacKinnon stated that the Board can only speak to what has been presented by the applicant.

Peter White, abutter (lot 80) readdressed the issue of the blocked access (blocked about three (3) years ago) on "Shore Drive". This section was deleted from the property map that the applicant used for his request. Mr. White deems the map "faulty" due to the omission. He stated that the situation is a public matter and should be taken into consideration. He indicated RSA 674:41e points to this and that by not addressing this issue as a part of this case, would force the abutters to take expensive action. The ZBA could take care of the issue now by requiring the applicant to reopen that section of the road. Permitting the closure of that access to remain in place allows a change to the community. Mr. White was reminded that the issue is a private deed restriction put

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in the deed by the White family not by the Town. The White's need to be the ones to enforce it. Further discussion of this issue continued between the Board and abutters.

Mr. Loeser stated that according to the letter from the Fire Chief, emergency access to the driveways is not an issue. Speaking to the suggestion to push the proposed structure back is not possible due to the location of his septic.

Attorney, Mr. Puffer read a portion of section 45.05 from Attorney Laughlin's Treatise: "Real Estate Conveyances Bounded by Roadways". Based on the points in that section all the aspects Attorney Schulte raised are allowed as a matter of right. Supreme Court has made it very clear that common sense and personal knowledge can be relied upon to determine if the value of properties would be affected by increasing the size of one home.

Ms. MacKinnon stated it would have been easier if the applicant had provided proof that the size of his proposal would not have adverse effects to the value of the abutting properties. It is the burden of the applicant to provide the evidence.

Public Discussion Closed: 8:38pm

Mr. Bassett stated that he would abstain from voting due to the lack of proof/ knowledge of the sizes of the area homes to determine if the request is reasonable and not harmful to the values of the surrounding homes. Although he was a voting member for this case from the beginning he did not visit the site and therefore does not have knowledge of the homes surrounding the area.

Motion Made By: Ms. MacKinnon "regarding Case 18-005-VA, a continuation of the application from Peter Loeser and Joy V. Riddell, requesting a Variance from Article II Section C:1(a) of the Nottingham Zoning Ordinance, to permit an addition, large equipment storage shed and ADU/garage on a private road. The property is located at 53 White's Grove Road in Nottingham, NH and is identified as Tax Map 63 Lot 81. And I move that we deny this application for a variety of reasons, no hardship was proven, the house is not in keeping with the neighborhood and there was not a lot of neighborhood support for it."

Seconded By: Mr. Russo

Vote: 2-2-1 Motion Failed

Legal opinion will be sought regarding the tied vote.

Motion Made By: Mr. Russo to continue the case to August 23, 2018 at 7pm.

Seconded By: Ms. MacKinnon

Vote: 5-0-0 Motion Passed

Member Reseated: Peter White - Kevin Bassett returned to a non-voting Alternate.

Public Hearing Opened: 8:51pm

- **Case 18-008-VA**

Application from Dennis and Bertha Fowler, requesting a Variance from Article II Section 2.J and Section 3.F of the Nottingham Zoning Ordinance, to permit a 750 square foot detached ADU on their 14.28 acre property located at 50 Priest Road in Nottingham, NH and is identified as Tax Map 20 Lot 4.

Mr. and Mrs. Fowler presented their case: They presented photos of their property which depicted stakes in the ground identifying the location of the proposed detached ADU along with a photo of the ADU they chose. The applicants highlighted the hardships they would have to deal with to remain in compliance with an attached ADU:

- The primary dwelling's septic is in the only location for a proposed attached ADU

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- More exterior stairs would be needed with an attached ADU thus burdening the owners with physical disabilities
- The current septic is for 3 bed, thus new septic would be required
 - A test pit has been dug and passed on the site of the proposed new septic- during a recent subdivision
 - This allows the current septic to remain undisturbed

Proposed a 660sf stick built, not manufactured, ADU- may increase size to 750sf to include ADA hallways. The applicant's own a logging, dead end, road; "Woods Road" on their property that would be utilized as their driveway. Their current, dug well for the primary would be tied into for the ADU.

Motion Made By: Mrs. Bascom to "approve Case 18-008-VA application from Dennis and Bertha Fowler, requesting a Variance from Article II Section 2.J and Section 3.F of the Nottingham Zoning Ordinance, to permit the 750 square foot detached ADU on their lot located at 50 Priest Road in Nottingham, NH and is identified as Tax Map 20 Lot 4."

Seconded by: Ms. MacKinnon

Vote: 5-0-0MP

Public Hearing Closed: 9:04pm

Public Hearing Opened: 9:05pm

• Case 18-009-VA

Application from Jeffrey Cole Builders, LLC requesting a Variance from Article II Section C.1.c to permit a building outside of the 30,000 SF area and from Article II Section C.1.b.1 to permit a shared drive not kept to the common boundary. The property is located at 211 Old Turnpike Road in Nottingham, NH and is identified as Tax Map 15 Lot 8.

Alternate Seated and Voting: Kevin Bassett for Peter White (recused- business relationship) Surveyor, Roscoe Blaisdell, represented the applicants. He explained the two requests (file)

Board Comments:

To permit a shared drive not kept to the common boundary:

The Board determined the shared driveway itself to be a non-issue due to the fact that the proposed driveway(s) in question shared an entrance on state property off Old Turnpike Road. However, by the time the driveway(s) enter each lot they are separate. So in effect the driveway(s) no longer a shared driveway. However, expressed concern regarding the fact that the builder/ applicant leaves paving the driveway(s) up to the homeowner, most do chose to pave. The Board explained the concern with gravel vs. paved is the runoff onto the state highway. The applicant understood the concern and explained that he hired an engineer for the driveways due to the Planning Boards concerns for safety and slopes. The driveways will be designed with the runoff concerns addressed as well.

To permit a building outside of the 30,000 SF area:

The Board commented that there will be less impact with this proposal and determined it a reasonable request.

Public Comment:

Sam Demeritt abutter and Chair for the Nottingham Conservation Commission (NCC) has no objections personally and the NCC has been involved in the case as well. He was present to hear the case and is pleased that more of the back land will be left untouched- better for hunting.

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Motion Made By: Ms. MacKinnon “on Case 18-009-VA application from Jeffrey Cole Builders, LLC requesting a Variance from Article II Section C.1.c to permit a building outside of the 30,000 SF area and from Article II Section C.1.b.1 to permit a shared drive not kept to the common boundary. The property is located at 211 Old Turnpike Road in Nottingham, NH and is identified as Tax Map 15 Lot 8. I move that we approve this application.

Seconded By: Mrs. Bascom

Vote: 5-0-0mp

Decisions sheets filled out: Case #18-008-VA and Case # 18-009-VA

Minutes: 6-19-2018-tabled

Adjournment

Motion Made By: Mr. Russo

Seconded By: Ms. MacKinnon

Vote: 5-0-0 **Motion Passed**

Adjourn at: 9:33 pm

For the Nottingham Zoning Board of Adjustment

JoAnna Arendarczyk; Land Use Clerk