

# NOTTINGHAM ZONING BOARD OF ADJUSTMENT

September 18, 2018

1 *Approved: November 20, 2018*

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

4 **Members Absent:** Peter White

5 **Others Present:** JoAnna Arendarczyk, Land Use Clerk;

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

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

## 9 **Case 18-010-VA**

10 Application from Jill Carney, requesting a Variance from Article II Section C:1(a) of the  
11 Nottingham Zoning Ordinance, to permit the demolition and reconstruction of a single  
12 family dwelling on a private road. The property is located at 37 North River Lake Road  
13 in Nottingham, NH and is identified as Tax Map 1 Lot 43.

14 **The above case was WITHDRAWN**

## 16 **PUBLIC MEETING**

- 17 • Sign By-Laws and Procedures approved April 3, 2018
  - 18 ○ Signed as members arrived
- 19 • Review new policy: Policy of the Select Board Regarding Building Permit  
20 Application on Private and Class VI Roads
  - 21 ○ Mr. Russo summarized the policy- noting the ZBA's process in it. He also  
22 mentioned making a suggestion to the Planning Board to edit the Zoning  
23 Ordinance to reduce the requirements for Private Road cases seeking relief from  
24 the Zoning Board of Adjustment.
    - 25 ■ After further discussion and support from other members Mr. Russo agreed to  
26 contact the Planning Board Chair and the Town Administrator regarding this  
27 request.

## 28 **MINUTES**

### 29 • **June 19, 2018**

30 **Motion Made By:** Mrs. Bascom to approve the June 19, 2018 minutes as written and  
31 edited.

32 **Seconded By:** Mr. Russo

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

### 35 • **August 21, 2018**

36 The Board reviewed these minutes to be certain the reasons for the denial motion were  
37 noted in the minutes because the Notice of Decision (NOD) did not include the reason for  
38 denial for Case #18-005-VA.

39 The Board discussed the issue regarding the lack of details in the Notice(s) of Decision  
40 (NOD's). The Chairman mentioned that a legal opinion was received advising against  
41 the use of the Fact Finding Sheets each Board member writes up after a decision is made  
42 on a case. Effective immediately, the Board agreed to stop the use of the Fact Finding  
43 Sheets.

44 For future cases the Board agreed to vote on each of the five criteria separately, it will be  
45 written by the chairman and then read back into the minutes and then voted on by the

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Board so the basis for the vote will be noted accurately in both the NOD and the minutes. The Land Use Clerk informed the Board that the motion and discussion, after a motion was seconded, are noted verbatim in the NOD's. If the motion or the discussion after the motion was seconded do not include the reason for the decision, than the reason would not be included in the NOD. To include the reason taken from general discussion during the meeting, without it stated clearly in the motion or discussion would risk errors in interpretation.

The Board discussed whether the August 23, 2018 minutes need to have it stated that the Town's attorney's opinion on what constitutes as a hardship needs to be spelled out and that it was one of the reasons for the denial. Mr. Russo stated "I think that the standing of our vote is enough." Mrs. Bascom pointed out that the fifth criteria of the five criteria "mentions that literal enforcement would result in unnecessary hardship" to which Ms. Mackinnon's motion stated as quoted in the minutes and NOD sums up the hardship issue was not met. After discussion regarding the Boards discussion on August 21, 2018. The Board agreed that the minutes were clear and accurately reflected the meeting.

**Motion Made By:** Mr. Bassett to approve the August 21, 2018 minutes as written.

**Seconded By:** Mr. Bonser

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

- August 23, 2018

**Motion Made By:** Mrs. Bascom to accept the minutes of August 23, 2018 as written and amended.

**Seconded By:** Ms. MacKinnon

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

### **Request for rehearing of case 18-005-VA**

Comments regarding the Attorney's request for a rehearing:

- A few Board members disagreed with the attorney's chain of logic, stating that if it were followed than all cases would be approved
- A member noted that the request didn't include any supporting evidence regarding the Five Criteria
  - The whole request for a rehearing was based on the statement that "The reason to be before the ZBA is frontage" which is the trigger for the ZBA action. The decision on the action is based on the Five Criteria.
  - Based on the Malachy Glenn case, the reason for the requested variance cannot be the Board's reason for the denial.
  - It was pointed out that the applicant must show that that zoning regulations interfere with the reasonable use of the property considering its unique setting and its environment:
    - understanding that reasonable use is a judgement call
    - the applicant didn't convince three of the Board members

Mr. Bassett asked: "The 5 criteria is what we go on but what about the neighbors?"

- Mr. Russo stated that our vote shouldn't be based on the neighbors wants
- Ms. MacKinnon- concerns should be considered
- Mr. Bonser- if the request infringes on the abutters (setbacks) that should be

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- 91 considered
- 92 • Mrs. Bascom- agreed with Mr. Bonser regarding the setbacks, in addition to harm
- 93 to property or the property value being diminished which was not proven by
- 94 either the applicant or the abutters who claimed the project would diminish their
- 95 property value.

96 Mr. Bassett clarified his statement made at the August 23<sup>rd</sup> meeting regarding the current

97 home being “adequate” was based on the fact that it was not infected or unsafe it was

98 livable. Mrs. Bascom responded that the applicant stated several times that he was told it

99 was less expensive to rebuild than to add on to the existing structure.

100 Mr. Russo asked the Board to consider: Did we do due diligence or not?

101 Clarification was made as to the rehearing: it would be the same application heard again.

102 Possibly new material may be presented. Based on that information and the Boards

103 discussion on the attorney’s request the Board determined that they would be wasting the

104 Town’s and applicant’s time and money for the Board to come to the same decision.

105 He also added that item 13 was false, he did not say that he seconded the motion based on

106 the lack of neighboring support. He did comment at one point that there was not a lot of

107 neighboring support which was true.

108 **Motion Made By:** Mr. Russo to deny the applicants’ request for rehearing.

109 **Seconded By:** Ms. MacKinnon

110 **Vote:** 3-2-0 **Motion Passed**

111 **Mr. Bonser:** Stated that he thinks that all communications should go to the applicant for

112 superior court case.

113 **Motion Made By:** Mr. Bonser “to release all our email that have gone back and forth on

114 this case into the records.”

115 **Seconded By:** Mrs. Bascom

116 **Discussion:** A few members expressed that those communications would be requested

117 any way. Mr. Bonser stated that he wants the Board to offer them.

118 **Mrs. Bonser from public:** Asked how the applicant would know if there were

119 communications back and forth to request copies of. Mr. Chairman replied that most

120 lawyers would know to ask for them regardless assuming that Board would discuss the

121 cases via email.

122 **Vote:** 2-3-0 **Motion Failed**

123 Mr. Bonser stated he would advise the applicant to request them.

124 Mr. Russo reminded the Board that it is illegal to discuss case material outside of the

125 public hearings.

126

## 127 **NEXT MEETING**

128 The Land Use Clerk informed the Board that currently there is one case for the next

129 meeting.

130

## 131 **ADJOURNMENT**

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

133 **Seconded By:** Mr. Bonser

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

135 **Adjourn at:** 8:04 pm

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