

Nottingham Planning Board – November 28, 2012

**NOTTINGHAM PLANNING BOARD**  
**November 28, 2012**  
**Minutes Public Sessions**

**Meeting Location:** Nottingham Municipal

**Members Present:** Arthur Stockus, Chair; Troy Osgood, Vice Chair; Susan Mooney, Secretary; Eduard Viel; John Morin, Dirk Grotenhuis; Hal Rafter, BOS Representative; and Robert Davies.

**Others Present:** Paul Colby, Building Inspector/Code Administrator; Jo-Ann MacInnis, Land Use Clerk.

Chair Stockus called the meeting to order at 7:00 p.m. Introductions were made. Mr. Davies will be participating but not voting this evening.

**Public Hearing – Case P12-08-SUB**

Chair Stockus read the first case:

**Case P#12-08-SUB** – Application from Douglas N. Leib, Trustee, for acceptance, compliance review, and final approval of a subdivision. The properties in question are located on Cahill Lane and identified as Tax Map 68 Lot 49. Owners of Record: Douglas N. Leib, Trustee.

Mr. Colby advised the Board he had reviewed the application for a subdivision of Tax Map 68 Lot 49 and found said plans and documents to be complete and recommended acceptance of the application.

**Motion** was made by Susan Mooney to accept the application as complete for **Case P#12-08-SUB** – Application from Douglas N. Leib, Trustee, for acceptance, compliance review, and final approval of a subdivision. The properties in question are located on Cahill Lane and identified as Tax Map 68 and Lot 49.

**Second:** John Morin

**Vote: 7 – 0 Motion Passed**

Chair Stockus opened the Public Hearing for **Case #P12-08-SUB** and explained to those present the procedures to be followed: the applicant presents the proposal; the Board members ask questions of the applicant; other questions and comments are taken in the following order: abutters in favor, abutters opposed, anyone else who wishes to speak if time permits, and any written comments are read into the record.

Mr. Peter Landry, Landry Surveying, LLC, representing Douglas Leib, began the presentation to the Board describing a brief history regarding the property. He apprised

Nottingham Planning Board November 28, 2012

Page two

the Planning Board that the Zoning Board of Adjustment granted relief from the frontage requirement as well as the 30,000 square foot lot envelope requirements. Cahill Lane is a private road and all other lots have homes on them.

Mr. Osgood questioned who owns the lots shown on the plans and Mr. Leib replied that he did. Mr. Leib advised the Board that he will retain ownership of the road and his intent is to clarify driveway cuts to cover the people who are using the road now.

Mr. Osgood asked how many existing driveways there are and Mr. Leib stated there are four (4) driveways to (5) homes.

Mr. Grothenhuis questioned if the proposed lots had deeded easements and Mr. Leib replied that all do except for Lot 48 which will have if this plan is approved.

Ms Mooney asked where the access point is for people living on existing lots to have access to the lake and Mr. Landry advised that whether or not those lots have access rights to the lake does not encumber Mr. Leib's property.

Chair Stockus requested Mr. Colby to present his review to the Board at this time.

Mr. Colby presented his written review to the Board dated November 28, 2012 regarding Mr. Leib's property. (see attached) Mr. Colby advised the Board that it must make a decision regarding whether or not Mr. Leib has met all the conditions set by the Zoning Board plus all Town requirements.

Fire Chief Vilchok's memo dated November 11, 2012 to the Planning Board regarding this case was reviewed and it was determined that under RSA 674:36 IV the Board can not require the applicant to provide sprinkler systems that meet the requirements of NFRD 13-D.

Mr. Landry advised the Board that this land will be separate ownership and curb cuts for each one of the three (3) lots will be shown on the plans to provide the potential to build driveways. He stated that deeded easements will most likely be on Cahill Lane only.

Mr. Osgood stated that deeded easements must be written into the plan showing that existing houses receive same deeded rights.

The Board reviewed the Zoning Board of Adjustment's May 18, 2011 minutes to determine that Lots 49 and 49-1 are exempt from the 30,000 square foot requirement.

The Board determined the applicant has met the conditions as set forth at the May 18, 2011 Zoning Board of Adjustment's minutes and documented in it's Notice of Decision with regards to **Case 11-01-V-R**. Although the May 18, 2012 one (1) year deadline has

**Case #P12-08-SUB – Leib Continued**

passed, due to a court case heard by Judge McHugh on December 7, 2011 it was decided to utilize the State of New Hampshire Judicial Branch Notice of Decision regarding **Case 218-2011-CV-00677** dated December 15, 2011 and the new date that all ZBA conditions must be met is now December 7, 2012.

Mr. Landry stated that as soon as Mr. Leib receives approval from the Planning Board he will begin work on the road.

Mr. Osgood pointed out errors on the plan which shows total area amounts on Lot 49 and Lot 49-1 in acreage instead of square feet. Mr. Landry stated this will be rectified.

Chair Stockus closed the Public Hearing.

**Motion** was made by John Morin, that the application has met the conditions as set forth by the ZBA Notice of Decision for approval regarding the one (1) year start date to begin the Planning Board process and to begin the building of the road. The deadline to begin being December 7, 2012 due to the State of New Hampshire Judicial Branch Notice of Decision dated December 15, 2011.

**Second:** Dirk Grotenhuis

**Vote:** 7 -0 **Motion Passes**

The next discussion was whether or not the Zoning Board of Adjustment had granted variances for Lot 49 and Lot 49-1 regarding the 30,000 square foot lot envelope requirement.

The Board reviewed the Zoning Board of Adjustment March 1, 2011 minutes. Mr. Grotenhuis read Lines 146 through 148 which states, "Discussions were on when the parent lot is divided to the new lots does it then now have to meet the ZO or is it exempt. The Board eventually agreed with the applicant, that it was exempt".

Mr. Viel stated that he believes the applicant has done his due diligence in this case with the Zoning Board of Adjustment and that said Board did indicate their intent that no variance was required for the two (2) Lots 49 and 49-1 which is why the applicant has not applied for variances.

**Motion** was made by Mr. Viel to accept the Zoning Board of Adjustment decision made at their March 1, 2011 meeting that Lot 49 and Lot 49-1 are exempt from the 30,000 square foot lot envelope requirement and the applicant did receive a variance from the Zoning Board of Adjustment for Lot 49-2 as a non conforming lot.

Town of Nottingham Planning Board November 28, 2012 Meeting  
Page four

**Case #P12-08-SUB – Leib – Continued**

**Second:** Susan Mooney

Mr. Rafter, the Board of Selectmen representative, apprised the Planning Board the Board of Selectmen were the party that challenged the original Zoning Board of Adjustment decision and it is his opinion that to allow non conforming lots approval without formal variances being granted by the Zoning Board of Adjustment seems a bad precedent to set.

Mr. Davies advised the zoning ordinances state when you create a new lot you must have a 30,000 square foot envelope and if you do not have that a variance is required.

Mr. Morin stated the building already exists so the new lot is conforming around the building.

Mr. Davies insisted the plan was creating new lots that do not meet the statute.

Chair Stockus questioned if there were any further questions and seeing none the vote was called.

**Vote:** 4 – 3 **Motion** Passes

4 in favor – Troy Osgood; Susan Mooney, John Morin; Eduard Viel

3 opposed – Arthur Stockus; Dirk Grotenhuis; Hal Rafter

Chair Stockus stated that at this time a motion to approve or disapprove the subdivision was in order and asked Mr. Colby what needed to be changed on the plans should the Board vote to approve.

Mr. Colby replied the following conditions must be met: State of New Hampshire subdivision approval, new boundary markers set, note added to the plan stating Lot 49-2 is subject to impact fees, and deeded right of ways for Lot 49 and Lot 49-1. He also advised the Board the proposed Lot 49-2 shows the setback to the edge of the water to be fifty (50) feet. There is a conflict between the town's Zoning Ordinance, which states that no building within fifty (50) feet of waters edge, and, Article V B 1 (e) of the Subdivision Regulations which states the distance shall be no less than seventy-five (75) feet.

It was the consensus of the Board to accept the Zoning Board of Adjustment fifty (50) foot requirement, and, therefore, no waiver is required.

Town of Nottingham Planning Board November 28, 2012 Meeting  
Page Five

**Case #P12-08-SUB – Leib Continued**

Mr. Colby stated the 40,000 square foot area for septic usage is not shown to meet the setback requirements as per the town's Subdivision Regulation Article V A6 (5) (ii) for all three (3) proposed lots.

Mr. Landry explained that it was the opinion of the applicant the plan met state setback requirements and as he was granted a variance For Lot 49-2 as well as the Zoning Board of Adjustment exempting Lots 49 and 49-1 from the 30,000 square foot requirements he felt he could put the 4K requirement within ten (10) feet of the lot line on all three (3) lots.

Mr. Morin questioned if the applicant's plan was to leave this up to the state and Mr. Landry replied that it was.

Chair Stockus asked for a motion.

**Motion** was made by Vice Chair Osgood to accept the 40,000 square foot area for septic use that does not meet the setback requirements per Subdivision Regulations Article V A6 (5) (ii) for all three (3) proposed lots.

**Second:** John Morin

Mr. Viel stated that he felt this should be conditional pending state subdivision approval and Chair Stockus questioned if he would like to make an amendment to the motion at this time.

**Motion** was made by Edvard Viel to amend Mr. Osgood's above motion to add: pending the State of New Hampshire subdivision approval and septic approval.

**Second:** Susan Mooney

**Vote:** 7 – 0 **Amendment Passes**

The **Motion** shall now read: to accept the 40,000 square foot area for septic use that does not meet the setback requirements per Subdivision Regulations Article V A6 (5) (ii) for all three (3) proposed lots pending the State of New Hampshire subdivision approval and septic approval.

**Vote:** 6 – 1 Dirk Grotenhuis opposed – **Motion Passes**

**Motion** was made by Troy Osgood to approve **Case #P12-08-SUB** - Application from Douglas N. Leib, Trustee, for acceptance, compliance review, and final approval of a subdivision. The properties in question are located on Cahill Lane and identified as Tax Map 68 Lot 49 with the following conditions:

Town of Nottingham Planning Board November 28, 2013 Meeting  
Page six

**Case #P12-08-SUB – Leib Continued**

1. State of New Hampshire Subdivision Approval – Condition Sunset: November 28, 2013
2. New Lot Boundary Markers Set – Condition Sunset: November 28, 2013
3. Note Added to Plan Stating Lot 49-2 is Subject to Impact Fees – Condition Sunset: November 28, 2013
4. Deed Rights of Ways for Lots 49 and 49-1 – Condition Sunset: November 28, 2013

**Vote: 4 – 2 – 1 Motion Passes**

4 in favor - Arthur Stockus; Troy Osgood; John Morin; Edvuard Viel  
2 opposed – Dirk Grotenhuis; Hal Rafter  
1 abstention – Susan Mooney

**Public Hearing – Case #P12-09-LLA Merry Hill**

Chair Stockus read the second case:

**Case #P12-09-LLA**-An application from Beals Associates, PLLC for a lot line adjustment, acceptance, compliance review, and final approval. The property in question is located on Route 4, and Merry Hill Road and identified as Tax Map 4 Lot 5, 4-3 owner(s) of Record: Pogo Realty Trust and Merry Merry Hill LLC.

Mr. Colby advised the Board that following his review of the application it was found to be complete and he recommended the application be accepted.

**Motion** was made by Troy Osgood to accept the application as complete for **Case #P12-09-LLA**-An application from Beals Associates, PLLC for a lot line adjustment, acceptance, compliance review, and final approval. The property in question is located on Route 4, and Merry Hill Road and identified as Tax Map 4 Lot 5, 4-3 owner(s) of Record: Pogo Realty Trust and Merry Merry Hill LLC.

**Second:** Susan Mooney

**Vote: 7 – 0 Motion Passed**

Chair Stockus opened the Public Hearing at this time again explaining to those present the procedures to be followed: the applicant presents the proposal; the Board members ask questions of the applicant; other questions and comments are taken in the following order: abutters in favor, abutters opposed, anyone else who wishes to speak if time permits, and any written comments are read into the record.

Town of Nottingham Planning Board November 28, 2012 Meeting  
Page Seven

**Case #P12-09-LLA Continued**

Christian Smith, Beals Associates, PLLC and Joseph Falzone, Merry Merry Hill were present representing the applicant: Pogo Realty Trust.

Mr. Davies questioned on which road proposed Lot 4-3 will have frontage and Mr. Smith advised it will have frontage on Merry Hill and the new road.

Mr. Colby recommended the plan be conditionally approved pending boundary markers being installed for new lot lines upon completion of work to be performed and an affidavit of placement filed with the Planning office.

Chair Stockus asked if there were any further questions and seeing none closed the Public Hearing.

**Motion** was made by Susan Mooney to approve **Case #P12-09-LLA**-An application from Beals Associates, PLLC for a lot line adjustment, acceptance, compliance review, and final approval. The property in question is located on Route 4, and Merry Hill Road and identified as Tax Map 4 Lot 5, 4-3 owner(s) of Record: Pogo Realty Trust and Merry Merry Hill LLC contingent upon the boundary markers being installed for new lot lines and affidavit of placement with the Planning office upon completion.

**Second:** Troy Osgood

**Vote:** 7 – 0 **Motion Passed**

**Public Hearing – Case #P12-03-SUB Continuance Merry Hill/Route 4**

Chair Stockus read the third case this evening:

**Case #P12-03-SUB** – Continuance of an application from Beals Associates, PLLC for acceptance, compliance review, and final approval of a subdivision. The property in question is located on Merry Hill Road and Route 4 and identified as Tax Map 4 and Lot 5. Owner(s) of Record: Pogo Realty Trust and Merry Merry Hill, LLC.

Chair Stockus reminded those present regarding procedures to be followed.

Mr. Colby apprised the Planning Board that this application has already been accepted by the Board and this meeting is a continuance from the May 23, 2012 meeting although the original owners have changed and are no longer James Linda and Frederick Fernald but are now Pogo Realty Trust and Merry Merry Hill, LLC. Mr. Colby reviewed with the Board his memo dated November 28, 2012 regarding said subdivision. (see attached)

**Case #P12-03-SUB Continued**

Christian Smith, Beals Associates, PLLC and Joseph Falzone, Merry Merry Hill were present representing the applicant: Doucet Survey. A request has been submitted for a waiver to allow a twenty (20) foot pavement width for the proposed road where twenty-four (24) feet is required.

Mr. Smith also apprised the Board there are 15 lots on the property with no wetland impact, open space access will be met for residents and the applicant is proposing to use contiguous curbing and shoulders.

Chair Stockus asked if there will be sidewalks and Mr. Smith replied there will not be.

Ms. Mooney questioned if there are any vernal pools on the property and Mr. Smith replied that there were not; all wetlands on the property were site specific and poorly drained soils. There is a wetland delineation report as well as a site specific soil mapping report. No egg masses were found.

Mr. Colby continued to review his memo dated November 28, 2012 reminding the Board that this is his first time reviewing an open space design as he was not in attendance at the Board's May 23, 2012 meeting and, as such, requested the Board correct him if need be.

Mr. Smith apprised the Board the applicant is waiting for the Board to approve the submittal of the Stormwater Management and Sediment and Erosion Control Plan to RCDD. The Board advised the applicant to do same.

Mr. Smith submitted a written waiver request to allow a twenty (20) foot pavement width for the proposed road where 24 feet is required. A written waiver request was also submitted from Section V B 2 (1) for the use of a cul-de-sac as the Planning Board instructed the applicant to submit at it's May 23, 2012 meeting.

**Motion** was made by Susan Mooney to allow the applicant to submit the Stormwater Management and Sediment and Erosion Control Plan prepared by Beals Associates, PLLC to RCCD for engineering review of the plan for **Case #P12-03-SUB**.

**Second:** Edvard Viel

**Vote:** 7 – 0 **Motion Passes**

Mr. Osgood questioned if the road width had been reviewed by the Road Agent and the Fire Chief and Mr. Colby replied they had. The Chief did not mention a problem in his review dated November 27, 2012, and the Road Agent has advised Mr. Colby he had no problem with the twenty (20) foot width.



Planning Board November 28, 2012 Meeting Minutes  
Page Nine

**Case: #P12-03-SUB Continued**

**Motion** was made by Susan Mooney to accept the waiver request to the Subdivision Rules and Regulations Section V B 2 (1) to allow for use of a cul-de-sac in this open space subdivision **Case P12-03-SUB**.

**Second:** Edvard Viel

**Vote:** 6 – 0 – 1 John Morin abstained **Motion Passes**

**Motion** was made by Troy Osgood to accept the waiver request to the Subdivision Rules and Regulations to allow a twenty (20) foot pavement width for the proposed road for

**Case: #P12-03-SUB.**

**Second:** Susan Mooney

**Vote:** 6 – 1 Dirk Grotenhuis opposed **Motion Passes**

Mr. Viel advised Mr. Smith there appears to be an acre difference on the plan regarding what is actually being submitted as open space. Mr. Smith will look into this and have it clarified for the next meeting.

Mr. Colby recommended to postpone any decision until the applicant has made all changes to the proposed plans.

**Motion** was made by Troy Osgood to continue **Case: #P12-03-SUB** until Wednesday, January 23, 2013 at 7:15 p.m.

**Second:** Susan Mooney

**Vote:** 7 – 0 **Motion Passes**

**Minutes – November 14, 2012**

Line 11 – Under Members Absent – Dirk Grotenhuis to be added

Line 31 – Capitalize the M in minor and the A in addition

Line 31 – Quotation marks (“) following the word Addition

Line 54 – Delete the words “and placing”

Line 56 - Capitalize the letter l (L) following the word Letter

Line 73 – Change “h.” to “i.” following Under Section 3.

Line 86 – Change “eliminated” to “eliminate”

Line 104 – Change “and bring to them” to and “bring to the Planning Board”

Line 109 – Insert time adjourned which was 9:00 p.m.

Planning Board November 28, 2012 Meeting  
Page Ten

**Minutes Continued**

**Motion** was made by Edvuard Viel to approve the November 14, 2012 Planning Board Minutes as amended.

**Second:** John Morin

**Vote:** 3 – 0 – 4 **Motion Passes**

Arthur Stockus, John Morin, Eduard Viel voted yes

Troy Osgood, Susan Mooney, Dirk Grotenhuis, Hal Rafter abstained

**Motion** was made by John Morin to adjourn the meeting at 9:15 p.m.

**Second:** Troy Osgood

**Vote:** 7 – 0

Respectfully Submitted

Jo-Ann MacInnis  
Land Use Clerk

461  
462