

Nottingham Planning Board

August 28, 2019

Approved: December 11, 2019

Board Members Present: Eduard Viel, Vice-Chair; John Morin, BOS Rep; Gary Anderson, SRPC Rep; Susan Mooney, Secretary; Teresa Mrs. Bascom; Robert “Buzz” Davies, Alternate; Leanne Gast, Alternate

Board Members Absent: Dirk Grotenhuis, Chair; Joseph Clough, CIP Rep; Tiler Eaton, BOS Rep;

Others Present: JoAnna Arendarczyk, Land Use Clerk; Stef Casella and Jen Czysz SRPC reps

Call to order: 7:00pm

Alternate(S) Seated and Voting:

Leanne Gast for Mr. Grotenhuis

Buzz Davies for Mr. Clough

Public Hearings

To Consider Acceptance and/or approval of the following:

- *Continued Case #19-008-SUB&SIT- Application from Domus Developers Inc. for a proposed 4 lot subdivision with two additional concurrent site plan reviews for 12 units each. The property is located on US Route 4/ Old Turnpike Road in Nottingham, NH and is identified as Tax Map 6 Lot 22.*

Mr. Berry informed the Board about the changes he submitted (file). He has received and replied to comments from Strafford Regional Planning Commission (SRPC) as well as CMA Engineers and the Nottingham Fire Chief (file).

Additionally, Mr. Berry informed the Board that they have preemptively enlisted DTC to draft portions of the condo association documents.

SRPC submitted a new review to the current plans (file).

CMA did not submit a review however Mr. Berry spoke with one of the engineers there and the biggest concern is the sprinkler system. The type and size of the system will be determined after the adequacy of the water supply is reviewed.

Mr. Berry apologized to Mrs. Mooney and the Nottingham Conservation Commission (NCC) for not attending a meeting. He stated that meeting with a Conservation Commission is typically done later in the process, however he plans to attend the September 9, 2019 meeting. Mrs. Mooney presented a chronology of the absence in attendance to the NCC, then stated she is pleased that he plans to present at the next meeting.

The Chair asked Ms. Casella for advice regarding the waiver. She stated that in her opinion the requests are appropriate, and she recommends conditional approval with the listed conditions noted in her review.

Mr. Viel read an email from Therese Thompson, Lamprey River Advisory Committee (LRAC) member (file). He also noted that this case is entering the 65 day window so either a decision needs to be made or a request for continuation needs to be accepted by the applicant.

The Board decided to move forward with a vote on the Waiver requests (file). Due to the technical nature of the requests Mr. Berry drew on the large plan what the regulations require vs. what it would look like if the waiver requests were granted.

Waiver 1. Ms. Casella commented that she has no concerns with the request.

Waiver 2. Route 4 is State Highway therefore the Board recognizes no jurisdiction but will address the request for a cleaner application.

Waiver 3. The regulation was put in place before the stabilization mats and better measures became common practice. With the newer stability measures less disturbance will occur. No guardrails are being proposed.

Waiver 4. Mr. Viel noted the Subdivision Regulation Section was noted in error. Mrs. Casella's comments note correct section (file).

Motion Made By: Mrs. Bascom to approve the four (4) waiver requests as written.

Seconded By: Mr. Anderson

Vote: 6-0-0 **Motion Passed**

The Board discussed the possibility of adding the requirement of meeting with the NCC on September 9th to the conditions list if the Board decided to vote on the case at this meeting. Mr. Berry expressed that they are agreeable to an extension to the September 11th Planning Board meeting if the Board is not ok with moving forward with an approval at this meeting.

Motion Made By: Mrs. Mooney to continue **Case #19-008-SUB&SIT** to September 11th at 7:00pm.

Seconded By: Mrs. Bascom

Vote: 6-0-0 **Motion Passed**

Mr. Berry received the approval to submit a pdf if any necessary changes are minor. Printed copies are not required for the September 11th meeting.

- **ZBA Administrative Appeal case remanded to the PB as a Waiver request**
Case 19-005-AA- Application from Joe and Dawn Fernald, requesting an Appeal to an Administrative Decision made by the Building Inspector on June 20, 2019. The decision is in regard to enforcement of the Zoning Ordinance Article IV Section W.9a &b The properties are located on Raymond Road in Nottingham NH and are identified as Tax Map 64 Lot1 and Lot 1 Sub 5 and Tax Map 66 Lot 1 Sub 3 and Lot1 Sub 4.

Mr. Viel noted the legal advice email regarding the case. (ZBA Case file)

Joe and Dawn Fernald presented their case to the Board touching on the points addressed in her waiver request letter (ZBA Case file) she pointed out the number of fees that were collected vs. the number of houses that were built noting that in her opinion there must have been a "grandfathering clause" that was in practice.

Ms. Czysz stated that based on her review Impact fees are required to be applied because the five (5) year "grandfather clause" has expired, regardless of any prior incorrect practice. She advised the PB to look at the standards for a waiver; for example, Capital Improvement- does it meet the standards of the waiver requirements.

The Board reviewed the waiver requirements section in the Zoning Ordinance (ZO)- Capital facility is one that could be considered due to the required installation of a Fire Cistern at the time of the Subdivision. Under this consideration the Fernald's could receive a waiver for the

Fire portion of the current Impact Fee amount but still be required to pay the Recreation and School portions.

If the Board agrees to consent to this waiver, a written request would be submitted to the Board of Selectmen for final consent.

The Board discussed the facts regarding the cistern:

- Current Subdivisions are often required to install cisterns and still pay the Impact Fee
 - Discussion about other subdivisions noted in applicants' letter (file)
- 14 years since the installation
- Reason the cistern was required unknown
 - Minutes from the case meeting could be reviewed
- No Impact Fee requirements have been waived due to cistern installation

Ms. Fernald pointed out there is confusing language in the ZO:

- 4 year vs 5 year standards
 - RSA 4 year "grandfathering clause"

Motion made by: Mrs. Mooney to refer this application for an appeal of Impact Fees to legal counsel for an opinion.

Seconded by: Mrs. Bascom

Discussion: It was noted that this is a waiver request not an appeal. Additionally, to seek counsel a specific question needs to be submitted. Ms. Czysty guided the Board in understanding the legal language in the current legal opinion email "not vested" means that impact fees apply.

Motion Withdrawn by: Mrs. Mooney

Second withdrawn by: Mrs. Bascom

The Board informed the applicants of their options:

- If the applicants disagree with PB interpretation of ZO they could appeal to ZBA for an appeal of interpretation
- If the applicants determine the PB didn't perform their job correctly they could appeal to superior court

Motion Made By: Mr. Anderson to deny the waiver request from Case 19-005-AA- from Joe and Dawn Fernald.

Seconded By: Mrs. Bascom

Vote: 4-0-2 **Motion Passed**

Ms. Fernald requested guidance on how to appeal the decision. The Board repeated the above discussed process. how to move forward with appealing Board decision.

Reason for denial:

The Chair clarified the reason for the denial was based on the Board's interpretation of the regulation of Impact Fees and the waiver process. The basis being on Section 10(C), the waiver provision is not met due to the Board being uncertain as to if the "cistern is applicable". The Board was unanimous in this clarification.

Public Comment

No comment

Public Meeting

Review Suggested Zoning Changes- Stef Casella SRPC Planner presented the list of suggested changes. The Board reviewed the list along with comments from Mr. Clough submitted via email (attached)

Ms. Czysty informed the Board that the topic of Tiny Homes is a "study committee".

The Board discussed other topics to review for changes in the future:

Nottingham Planning Board

August 28, 2019

- Multi-Family conversion
 - Definition
 - what constitutes as a conversion?
 - number of units allowed- interpretation confusion
- Detached Accessory Dwelling Units (ADU)
- Stream Buffer Ordinance (NCC provided first draft)
- Minor vs. Major Home Occupation

Ms. Casella suggested allowing the Land Use Clerk to invite the Zoning Board and Conservation Commission to attend the September 25th meeting to discuss any suggested changes to the Zoning Ordinance that would affect their roles in the Town. Poll ZBA for frequent cases.

Board and Staff Updates:

Strafford Regional Planning Commission Rep: Mr. Anderson- The DOT has a ten year plan updated for work to be done on area roads. The Land Use Clerk forwarded the email regarding this to the Board Members.

Adjournment

Motion made by: Mrs. Mooney.

Seconded by: Mrs. Bascom

Vote: 6-0-0 **Motion Passed**

Adjourned at: 9:27 pm

For the Nottingham Planning Board

JoAnna Arendarczyk, Land Use Clerk