



## **Town of Nottingham**

P.O. Box 114, 139 Stage Road, Nottingham, NH 03290

•Office 603-679-9597 x1 •Fax 603-679-1013 •E-Mail [plan.zone@nottingham-nh.gov](mailto:plan.zone@nottingham-nh.gov)

# **ZONING BOARD OF ADJUSTMENT PUBLIC HEARING NOTICE**

Notice is hereby given that the Nottingham Zoning Board of Adjustment will hold a public hearing at **7:00 PM on Tuesday, July 16, 2019** in Conference Room 1, at the Town Municipal Office to hear the following application:

### **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 regards 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.

**Questions?** Contact the Land Use Clerk, JoAnna Arendarczyk

**Ph.:** (603) 679-9597 ext. 1 **E-mail:** [plan.zone@nottingham-nh.gov](mailto:plan.zone@nottingham-nh.gov)

**Mail written comments to the Nottingham Planning Board:** PO Box 114, Nottingham, NH 03290

**For materials pertaining to the hearing go to:** <https://www.nottingham-nh.gov/zoning-board-adjustment>

**THE PUBLIC IS WELCOME TO ATTEND**

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FOR OFFICE USE ONLY	
Case No.	19-005-AA
Date Filed	6-24-19
Meeting Date	7/16/19
Fee Amount	\$235-
Date Paid	6/24/19
Outcome	

**APPLICATION FOR AN APPEAL TO AN ADMINISTRATIVE DECISION**

Name of Applicant Dawn + Joe Fernald

Mailing Address 104 Raymond Road Nottingham, NH 03290

Home Phone 679-1539 Work Phone \_\_\_\_\_ Cell 777-7599

Name of Aggrieved Party \_\_\_\_\_  
(if same as applicant, write "same")

Aggrieved Party's Address \_\_\_\_\_  
(if same as applicant, write "same")

Location of property on which the decision was made: 112 Raymond Road (+194-118

Tax Map 64 + 66 Lot \_\_\_\_\_ Raymond + 102 Raymond Rd)

**NOTE:** This application is not acceptable unless all statements following have been completed. Additional information may be supplied on a separate sheet if needed.

**APPEAL REQUEST**

I, the undersigned, allege that an error has been made in the decision, determination, requirement, or order of Dale Sylvia on 6/20/2019.  
Building/Zoning Official, Title Date

Article IV Section W.9ab of the zoning ordinance in question).

Decision of the enforcement officer to be reviewed:  
Impact Fee

What error do you believe was made in reference to the above noted Zoning Article and Section:

See attached page

I hereby certify that I am the aggrieved party or the authorized agent of the aggrieved party to the decision upon which this appeal is sought and that all information provided by me is true under penalty of law.

Dawn M. Fernald

Signature of Applicant

6/20/2019

Date

Please Print Name:

Dawn M. Fernald



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**To:** Nottingham Zoning Board of Adjustment  
CC: Dawn Fernald

**From:** JoAnna Arendarczyk-Land Use Clerk, Town of Nottingham

**Date:** June 10, 2019

**Re:** Appeal to an Administrative Decision per Zoning Ordinance: Article IV. W. 11. A  
For map 64 Lot 1 (not yet addressed- may be 102 Raymond Rd), map 64 lot 1 sub 4 (110 Raymond Rd),  
map 64 lot 1 sub 5 (112 Raymond Rd), map 66 lot 1 sub 3 (118 Raymond Rd) *map 66 lot 1 sub 4 (114 Ray Rd)*

This memo outlines details pertinent to the request as well as the history of the project(s).

- May 18, 2005- Approval of Subdivision plan #D-32652-  
Map 64 Lot 1 creating Lots 1-1 & 1-2  
And Approval of Subdivision plan #D-32653  
Map 66 Lot 1 creating Lots 1-1 & 1-2
- August 3, 2005- Approval of Subdivision plan #D-32908-  
Map 64 Lot 1-2 creating Lots 1-3 & 1-4
- September 28, 2005- Approval of Subdivision plan #D-33068-  
Map 64 Lot 1-4 creating Lot 1-5
- March 2011- Impact Fee Schedule approved at Town Meeting \$4,887.00 per SF dwelling
- Nottingham Zoning Ordinance Article IV Section W.9.a- b (cited in request letter):
  - A. *Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan. The amount of such assessment shall be applicable to subsequent building construction within the approved subdivision or site plan for a period of four years from the date of Planning Board approval. Once this four-year period has expired, remaining construction for which no building permit has been obtained shall be subject to the adopted fee schedule in force at the time of the building permit application.*
  - B. *With the exception of those plats and site plans meeting the conditions in (a) above, and when no other Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit. The impact fee schedule in force at the time of the building permit*
- RSA 674:39: Five-Year Exemption. –
  - I. *Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board*



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*and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that:*

*(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;*

*(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and*

*(c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.*

*II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.*

*III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:*

*(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and*

*(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.*



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*IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 5-year exemption described in paragraph I. The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a).*

- The Annual Expenditure Report for Impact Fees requested by email was sent via email (attached):
  - From: Nottingham Planning and Zoning
  - Sent: May 23, 2019 at 9:33am
  - To: Dawn Fernald
  - Subject: RE: Impact Fee Expenditure Report Request
  - Attachments: Impact Fees.xlsx

We have just completed a fourth house in the subdivision on maps 64 & 66 (3 previous homes had already been built in the subdivision between 2005-2007). We challenged an impact fee on 106 Raymond Road and when it was looked into further by the building/planning office, we were told "the lot was indeed grandfathered" and the impact fee was waived. We pulled permits and CO's for 108 and 110 Raymond Road under 3 different inspectors (including the state once) and an impact fee was not mentioned or charged for those lots. And now, despite no changes having been made to the subdivision and no recent changes to town ordinances which we are aware of, an impact fee is now being enforced as a condition for the Occupancy permit for 112 Raymond Road and as we understand all of the remaining lots in the subdivision.

While we understand that there is much debate in many towns, in Nottingham when the issue of impact fees was put on the ballot, it was openly presented by town officials that all current subdivisions would be grandfathered from the impact fee, this further seems to be supported in how our town ordinance is written slightly different than other towns/state references, with the added verbiage " 9b. **With the exception of** ... (or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed...as a condition for, the issuance of a building permit)." The added/different wording in our ordinance makes an already gray ordinance, even grayer, and actually seems to support the "grandfathering" clause, and why we were told the fee was waived when we contested it for back in 2017. While reviewing the Impact Fee Revenue report, we have also noticed that Paul Langdon/Falzone/Maple Ridge has not been subject to any impact fees because of grandfathering, adding even more confusion to this issue for us.

However, if the grandfathering clause is somehow now null and void for the remaining lots in this subdivision, we would like to request a waiver for the remaining lots based on the Capital Improvements already made to the town as a condition for the subdivision being originally approved in 2005. Prior to this 8 lot subdivision being brought to the planning board for approval, the town/fire department had pre-determined in the Master Plan where they would like to have cisterns. Due to this subdivision's proximity to where the cistern was desired/planned, the town required that the applicant (James S. Fernald Trust/Linda R. Fernald Trust) cover the full costs of this cistern despite it not being a necessity/requirement of an 8-lot subdivision, all with state road frontage and easily accessible to emergency vehicles/apparatus/personnel, but rather as a Capital improvement request for the town's overall use.

The cost of this cistern was approximately \$90,000.00. Divided by the 10 lots in the approved subdivision equates to an \$9,000.00+ per lot investment in the town's Master Plan/Capital Improvement which is significantly higher than the current per lot impact fee.

And while not necessarily pertinent it should also be noted that the first two lots in this subdivision have also been subjected to an overestimated/over assessed Land Use Change Tax, despite that the negotiated price we had paid for the lots was based on Market Value coupled with the inability of the land owner to sell the lots over the course of 12yrs based on the difficult terrain. We have only been able to recoup those overages on one of those lots, as we were inadvertently informed of the amount

(typically we have to escrow 2% higher than whatever the town administrative assistant reports to the buyer's title company as the LUCT and so we never see the actual bill or even know when it is sent). Further, a tax bill was issued on 108 Raymond Road while it was still under construction and not yet released from current use.

All of the inconsistencies throughout these builds have negatively impacted negotiations on both the land home and our budget. Our negotiated land purchase/budget of all of these lots was based on the impact fee being "grandfathered" and a 10% value on the lots. And while there seems to be an assumption in the town office that these fees are somehow passed onto the home buyer, due to the nature of how contracts and appraisals work, that is simply not true--we can't sell a home for \$16,000 more than the guy down the street because we are being charged \$9,000 LUCT and a \$5,400 impact fee and he is not. All of these costs have come directly out of our budget/bottom line.

We thank you for your consideration of the circumstances in this matter.

Dawn & Joe Fernald



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Nottingham NH 03290

## Abutter(s) List

Office 603-679-9597 X1  
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[in.zone@nottingham-nh.gov](mailto:in.zone@nottingham-nh.gov)  
[www.nottingham-nh.gov](http://www.nottingham-nh.gov)

**\*\*PLEASE PRINT THREE (3) ADDRESS LABELS PER ABUTTER- INCLUDING THE APPLICANT, OWNER AND PROFESSIONAL(S) \*\***

**1. APPLICANT INFORMATION:**

Printed Name: Dawn Fernald Contact Telephone: (603) 777-7599  
Address: 104 Raymond Rd Nottingham, NH 03290

**2. OWNER INFORMATION:**

Printed Name: James S. Fernald + Linda R. Fernald Revocable Trusts  
Address: P.O. Box 54 Deerfield Rd Nottingham, NH 03290

**3. PROFESSIONAL(S) INFORMATION:**

Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

SEE ATTACHED Abutter(s) Information				
4.	Map:	Lot:	Name:	Address:
5.	Map:	Lot:	Name:	Address:
6.	Map:	Lot:	Name:	Address:
7.	Map:	Lot:	Name:	Address:
8.	Map:	Lot:	Name:	Address:
9.	Map:	Lot:	Name:	Address:
10.	Map:	Lot:	Name:	Address:
11.	Map:	Lot:	Name:	Address:
12.	Map:	Lot:	Name:	Address:
13.	Map:	Lot:	Name:	Address:

I, Dawn Fernald, the undersigned, certify that to the best of my knowledge, the above is an accurate and complete abutter(s) list and that the information was obtained from the Nottingham Assessing Office no more than five (5) days prior to the date of this application..

Dawn M. Fernald 6/20/2019  
Applicant's Signature Date

The Nottingham Zoning Board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 677, covering planning and zoning.

### CONDITIONS FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

1. The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.
2. The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake.

In lieu of the findings required under (1) and (2), the owner may demonstrate, to the satisfaction of the Board, that the violation has existed for 10 years or more and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected. If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

3. The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area.
4. The cost of correction would far outweigh any public benefit to be gained.

Once a waiver is granted, the property is not considered to be a nonconforming use and the waiver does not exempt future use, construction, or additions on the property from full compliance with the zoning ordinance.

### APPLICATION PROCEDURE FOR ZONING BOARD OF ADJUSTMENT HEARING

Clarification of the Zoning Ordinance and assistance in completing the application can be obtained from the Secretary of the Zoning Board. Legal assistance should be obtained from the Applicant's personal attorney. Correctness of information submitted is the responsibility of the Applicant.

The following must be filed with the application:

- ✓ Application fee, public notice fee, and abutter notification fee.
- ✓ Three (3) sets of abutter mailing labels. Abutter mailing labels must include the names and legal addresses of applicant, property owner, all property owners abutting the subject parcel, including those directly across the street or stream, and anyone whose professional seal appears on the plan. Tax Map No. and Lot No. must also appear on the list for the abutting properties. **Important:** Applicant shall certify that the abutters are as indicated in the Town of Nottingham's Assessing Office not more than 5 days prior to day of filing the application with the Zoning Board. (SEE FORM A).
- ✓ Six (6) sets of 11"X17" plans drawn to scale which show lot location, lot size, setbacks, locations and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, and ownership of adjoining lots of land. Plans do not have to be professionally drawn.
- ✓ A signed and notarized Authorization To Enter Upon Said Property form. (SEE FORM B).
- ✓ Copy of the violation notification from either the Nottingham Code Enforcement Officer or the Nottingham Board of Selectmen.
- ✓ If the applicant is not the owner, a signed and notarized Owner's Authorization for Representation form must be submitted. (SEE FORM C)

No application shall be accepted for processing until all of the required information is received.

### HEARING NOTIFICATION & PROCESS

Your hearing will be held within 30 days after submission of a complete application. You will be notified by certified mail as to time, place, and date of the public hearing. At the time of the hearing, you must present your case to the Board or must authorize a representative to appear for you. (FORM C).

### RULES OF PROCEDURE FOR CONDUCT OF MEETINGS

Each applicant is entitled to a hearing by a five-member Board. If, for any reason, five members are not available, the applicant(s) may elect to postpone the hearing and decision until the next meeting of the Board at which five members are present. For the benefit of those in attendance at public hearings, the Chairman will briefly explain the procedure before the hearings begin and introduce the members of the Board. The public hearing will begin with the applicant(s) and/or his/her representative presenting the petition. Then those wishing to speak in favor of the petition may do so, followed by those wishing to speak in opposition to the petition. After this, the applicant(s) and those in favor may speak in rebuttal, followed by the rebuttal of those in opposition. The debate may be closed when the Chairman deems it appropriate. All comments must be addressed to the Chair. Anyone rising to address the Chair should identify him/herself, giving his/her name and address. No one will be allowed to speak twice until all who wish to speak have been heard. Reasons will be given for all decisions of the Board and references made to the appropriate sections of the Zoning Ordinance. In the event the Board wishes to postpone making a decision, the applicant(s) will be so advised. All decisions will be announced by the Chair at the time they are made, and formal written notification will be mailed to the applicant(s) within 144 hours after the decision is rendered. In the event no one is available to present a petition to the Board at the public hearing, the petition will be automatically dismissed on the grounds that no public hearing has been held. A petition may be



# Abutters Lis. Report

Nottingham, NH  
June 19, 2019

## Subject Property:

Parcel Number: 064-0001-005  
CAMA Number: 064-0001-005  
Property Address: 112 RAYMOND ROAD

Mailing Address: FERNALD, JAMES S REVOC TRUST  
FERNALD, JAMES S -TRUSTEE  
P.O. BOX 450  
NOTTINGHAM, NH 03290

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## Abutters:

Parcel Number: 059-0040-002  
CAMA Number: 059-0040-002  
Property Address: RAYMOND ROAD

Mailing Address: BATCHELDER, HEATH A MCPHEE,  
KATHERINE L  
77 RAYMOND ROAD  
NOTTINGHAM, NH 03290

Parcel Number: 063-0046-000  
CAMA Number: 063-0046-000  
Property Address: RAYMOND ROAD

Mailing Address: FERNALD, JOHN JR, TRUSTEE  
FERNALD, DAVID B  
57 RAYMOND ROAD  
NOTTINGHAM, NH 03290

Parcel Number: 064-0001-000  
CAMA Number: 064-0001-000  
Property Address: RAYMOND ROAD

Mailing Address: FERNALD, JAMES S REVOC TRUST  
FERNALD, JAMES S -TRUSTEE  
P.O. BOX 450  
NOTTINGHAM, NH 03290

Parcel Number: 064-0001-001  
CAMA Number: 064-0001-001  
Property Address: 104 RAYMOND ROAD

Mailing Address: FERNALD, JOSEPH H FERNALD, DAWN  
M  
104 RAYMOND ROAD  
NOTTINGHAM, NH 03290

Parcel Number: 064-0001-004  
CAMA Number: 064-0001-004  
Property Address: 110 RAYMOND ROAD

Mailing Address: FERNALD, JAMES S REVOC TRUST  
FERNALD, JAMES S -TRUSTEE  
P.O. BOX 450  
NOTTINGHAM, NH 03290

Parcel Number: 064-0002-003  
CAMA Number: 064-0002-003  
Property Address: RAYMOND ROAD

Mailing Address: BROWN, SHIRLEY G GREENLEAF,  
WENDY  
31A HUMMINGBIRD DRIVE  
MERRIMACK, NH 03054

Parcel Number: 064-0002-004  
CAMA Number: 064-0002-004  
Property Address: 93 RAYMOND ROAD

Mailing Address: MIRACLE MOUNTAIN LLC C/O JASON  
LACERTE  
21 CASE ROAD  
NOTTINGAM, NH 03290

Parcel Number: 066-0001-000  
CAMA Number: 066-0001-000  
Property Address: RAYMOND ROAD

Mailing Address: FERNALD, LINDA R TRUSTEE L.R.  
FERNALD REV TRUST  
PO BOX 450  
NOTTINGHAM, NH 03290

Parcel Number: 066-0001-003  
CAMA Number: 066-0001-003  
Property Address: 118 RAYMOND ROAD

Mailing Address: FERNALD, LINDA R TRUSTEE L.R.  
FERNALD REV TRUST  
PO BOX 450  
NOTTINGHAM, NH 03290

Parcel Number: 066-0001-004  
CAMA Number: 066-0001-004  
Property Address: 114 RAYMOND ROAD

Mailing Address: FERNALD, LINDA R TRUSTEE L.R.  
FERNALD REV TRUST  
PO BOX 450  
NOTTINGHAM, NH 03290



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6/19/2019

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[www.nottingham-nh.gov](http://www.nottingham-nh.gov)

### OWNER'S AUTHORIZATION FOR REPRESENTATION

**Property location:** 112 Raymond Road, 114 - 116 Raymond Rd, 102  
I, the undersigned owner of the property listed above, hereby verify that I have authorized \_\_\_\_\_ to Raymond represent me/us and apply for the required approval(s) from the Planning Board in the Town of Nottingham, New Hampshire for the following:

- Subdivision/Lot Line Adjustment
- Site Plan Review
- Backlot Subdivision
- Design Review
- Other \_\_\_\_\_

FOR: Impact Fee Waiver

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**Name of Owner** \_\_\_\_\_  
Address of Owner \_\_\_\_\_  
Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

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Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

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