

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

July 16, 2019

Approved: September 17, 2019

Members Present: Bonnie Winona-MacKinnon, Chair; Teresa Bascom, vice-Chair; Terry Bonser; Peter White; Kevin Bassett, Alternate

Members Absent: Realene Shippee-Rice

Others Present: JoAnna Arendarczyk, Land Use Clerk; Wendy Greenleaf, Abutter; Dale Sylvia, Building Inspector

Call to order: 7:01pm

Applicant was not present at the opening of the meeting. The Chair adjusted the agenda to vote on the minutes.

Minutes

May 21, 2019

Motion Made By: Mrs. Bascom to approve the minutes as amended.

Seconded by: Mr. Mr. Bonser

Vote: 4-0-1 **Motion Passed**

June 18, 2019- noted in error on the agenda

Building Inspector, Dale Sylvia, introduced himself to the Board.

Land Use Clerk called the applicant, Dawn Fernald who stated she wasn't aware her presence was required for the hearing. She requested the Board hear the case and base their decision on the information in the letter she submitted with her application.

Public Hearing

Public Hearing Opened: 7:17pm

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.

The Chair read the applicants letter submitted with the application (File).

Board Discussion:

The applicant's letter pointed out the language noted in the Zoning Ordinance Article IV, Section W. 9.b which the Board discussed whether that led points to an exemption. The Board discussed another point that was mentioned in the letter, past Subdivisions that have received waivers/exemptions, as well as the topic of "grandfathering".

Mrs. Bascom and Mr. Bassett agreed that a discussion about the previous developments should not be applicable to this case including what the other Building Inspectors said or did because that looks at precedence which is not anything the Zoning Board should be looking at.

Mrs. Bascom also stated that there is no such thing as "grandfathering", that term was removed from the Zoning Ordinance in March. The Chair stated "that is semantics, it is still a commonly used word to express the notion that things are exempt if they existed before the ordinance."

The applicant's letter also noted a difficulty in selling the lots. However, proof of this hardship was not given.

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The topic of hardship raised the question as to what criteria should be applied to a case like this. The Land Use Clerk stated that criteria is not given for Administrative Appeals, the Board is to look at the facts and determine if based on the facts the request should be denied or approved.

Public Comment:

The Building Inspector, Dale Sylvia, spoke to his interpretation of the RSA and the Town Zoning Ordinance which led to his decision to apply the Impact Fee. He agreed with Mrs. Bascom that “grandfathering” indeed does not exist, whether the applicant used it or not. There is a five year exemption after the passing of the Impact Fee Ordinance which ended in March of 2016. The exceptions have some specific requirements, such as a majority of the project being done. Mr. Sylvia stated that neither the applicant nor the Town could produce anything in writing stating that a waiver for the Impact Fee was ever granted.

An internal meeting had been held regarding the Impact Fee for 108 Raymond Road. Although the decision was not put in writing, staff (although the final decision was his own as the new Building Inspector at the time, and not knowing the full history of the development) decided to waive the fee for 108 Raymond Road due to the lack of proof as to whether the applicants were informed of the requirement to pay the fee. However, future builds would require payment of the Impact Fee due to the 5 year exemption after Impact Fees were voted in by the Town having expired in 2016.

He added that the cistern being a Capital Improvement could be taken into consideration. He went further to add that residential sprinklers are often accepted in exchange for a cistern but that may not necessarily be the case with this subdivision.

Mr. Sylvia was asked if he could comment on his knowledge regarding the Langdon/ Falzone subdivision. What he knows is that the five year exemption was granted however he doesn’t know what that timeline is for certain. He concluded that he doesn’t have the full details before him and that he cannot speak to the past.

Mr. Sylvia stated that there is a plan to include new verbiage indicating that “Impact Fees will apply” on the Building Permits. Mrs. Bascom suggested having that note signed by the applicant to indicate the applicant read and understands it.

The Chair stated that if the Board agrees to have a legal opinion on the case, than she will contact the Town Administrator regarding the issue; due to the unique qualities of this application, specifically, no applicant or representative was present which had not happened in anyone’s memory. Additionally the Board had no experience with questions of this nature; Impact Fee waivers in a partially completed subdivision which began before the Impact Fee Ordinance, as well as no guidelines from which to draw a conclusion as is provided with Variances and Special Exception applications. This was agreed to by a consensus.

Mr. Sylvia asked the Board- If this were to be considered to be overturned what would the implications be to future applications in respect to impact fees? The Chair stated that the Board doesn’t set precedence therefore it would not affect future applications.

Wendy Greenleaf of 93 Raymond Rd.- Stated that she agreed with Mr. White in that the applicants are seeking to get out of the Impact Fees. Additionally, she stated the applicants inappropriately pointed out other people’s business. The cistern issue is in her opinion the “cost of doing business”. If the project had been completed by 2016 the case would not be before the Board. Ms. Greenleaf recommends that the Board deny the request.

Public Comment Closed: 8:10pm

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Motion Made By: Ms. MacKinnon to continue the case to the next regularly scheduled August 20th meeting at 7pm “and consult with an attorney about guidance or making decisions in cases, I mean, all of the cases are objecting a decision usually made by a building inspector but this one is asking for a decision in an area that we don’t have guidelines for.”

Discussion: Mr. Sylvia asked if the Board wanted him to attend the next meeting. The Board agreed his presence as well as the applicant’s presence would be appropriate.

Seconded By: Mr. Bonser

Vote: 4-1-0 **Motion Passed**

Staff/ Board Members Update

ADJOURNMENT

Motion Made By: Mrs. Bascom

Seconded By: Mr. White

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

Adjourn at: 8:17pm

For the Nottingham Zoning Board of Adjustment

JoAnna Arendarczyk; Land Use Clerk