

**Nottingham**  
**Zoning Board of Adjustment**  
**June 21, 2016**

1 *Accepted by the Board: October 4, 2016*

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

4 **Others Present:** JoAnna Arendarczyk, Land Use Clerk; Paul Colby, Code Enforcement Officer;  
5 Peter Landry, Surveyor- Representative of the applicant, Chris Albert, Resident; Gary Anderson,  
6 Resident; Lou Serra, Applicant

7 **Prior to the start of the meeting Mr. Colby gave the Board a copy of the response from the**  
8 **Town Lawyer to the Planning Board (PB). This response was a confidential letter stating**  
9 **his opinion regarding the case being appealed before the Zoning Board of Adjustment**  
10 **(ZBA) at this meeting.**

11 **Call to order:** 7:00pm

12 **Public Hearing Cases**

13 **Public Hearing Opened:** 7:00pm

14 **Case 16-006-AA-** Application from Jason White, J & L Terra Holdings, INC. requesting an  
15 Appeal to an Administrative Decision made by the Nottingham Planning Board on May 11,  
16 2016. The decision is in regards to an interpretation of the Zoning Ordinance Article II Section  
17 C.2.c & Article II C.2 . The property is located on Smoke Street, Nottingham, NH and is  
18 identified as Tax Map 10 Lot 4-1.

19 **Board Member Recusal:** Teresa Bascom recused herself as the case being heard is an appeal to  
20 the PB's decision, of which she is a voting member and was present at the time it was heard.

21 **Alternate Seated and Voting:** Kevin Bassett for Teresa Bascom

22 Mr. Landry, representing the applicant, provided the Board members: *New Hampshire*  
23 *Municipal Association (I) Court Update Regulation Requiring a Minimum Size for Building Site*  
24 *Serves Legitimate Land Use Purpose Doyle v. Town of Gilmanton No. 2006-797, 7/19/2007.* (In  
25 file) an article regarding a case referenced in the lawyer's letter. He then briefed the Board on  
26 the history of his case, and stated his defense- referencing the materials in the packets the Board  
27 members were provided. (In file)

28 **Public discussion:** Chris Albert informed the ZBA that his opinion is that the setback change  
29 that was voted on was interpreted by the voters just as Mr. Landry interpreted it as. "What the  
30 Town Attorney has done is contrary to the spirit of what the voters went to vote for..."  
31 Gary Anderson spoke, as a resident and builder, in support of the applicant. He stated that this  
32 case is clearly an interpretation issue. What the meaning was, may have been misconstrued and  
33 there have been subdivisions followed through with the 50ft dwelling setback with a 20 ft  
34 setback for the building envelope.

35 No one spoke against the case.

36 Mr. Bonser asked if Mr. Landry had read the "Doyle" case prior to the night the lawyer's  
37 decision was presented. Mr. Landry replied that he had not read it prior to that night and it  
38 wasn't until he did some research that he determined that the "Doyle" case does not apply to  
39 setback situation at hand.

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40 Mr. Colby stated that the part of the “Doyle” case that does apply is part of “Attorney/ client  
41 privilege”. He also put the Smoke St. plan that this appeal case pertains to, up on the screen for  
42 the Board to see. He pointed out that under his original interpretation of the Ordinance the plan  
43 is accurate. Mr. Landry has the dwelling in the 50ft setback and then the rest in the 20ft setback.  
44 One Board member asked Mr. Landry how many cases have gone through the PB with the 20ft  
45 setbacks. Mr. Landry said that he can only speak to his cases which he put in his packet for the  
46 ZBA- two (2) Subdivision plans totaling five (5) new lots between March 2015 and April 2016.  
47 It was then noted that the PB had ample opportunity to put an amendment to the voters this past  
48 March, amending the change to clarify the intentions of the setback change.

49 **Public Hearing Closed: 7:44pm**

50 A discussion ensued about what the ZBA originally had in mind for the change in the Zoning  
51 Ordinance back in 2014 for the 2015 Election. Their change was intended for Accessory  
52 Structures not dwellings. This changes was requested based on the excessive amount of cases  
53 the ZBA heard, requesting a variance on the setbacks to allow a garage, shed, barn or porch. The  
54 Board agreed that a change in the language is necessary.

55 It was pointed out that accessory buildings, which have the 20’ setbacks, may have septic  
56 systems which would be allowed per the approved amendment.

57 Mr. Russo requested Mr. Colby read the definition of Building Envelope from the *Subdivision*  
58 *Regulations* (“BUILDING ENVELOPE- Shall mean the area of a newly created subdivided lot  
59 eligible for the placement of dwelling units. Building envelopes are restricted by operation of  
60 local federal and state law and can be further restricted in their location by operation of a  
61 subdivision approval to enhance the purposes and further the requirements of these regulations.”)  
62 He then read the definition of Lot Envelope from the *Subdivision Regulations* (“LOT  
63 ENVELOPE - A two-hundred by two-hundred (200’ x 200’) foot square or a minimum of thirty  
64 thousand (30,000’) contiguous square foot upland buildable soil area, depicted on a plat or  
65 building permit, which is being designated as a suitable area that can meet all local and State  
66 requirements. The thirty thousand (30,000’) contiguous square foot areas shall also be of  
67 adequate width and/or depth so as not to create an hourglass effect of less than fifty (50’) feet at  
68 the narrowest point. The lot envelope shall not include either areas unfit for building and their  
69 appropriate setbacks or building setbacks.”) He then emphasized that a developer has to show to  
70 the PB that there are 30,000 square feet of buildable area within the setbacks on that lot. His  
71 interpretation has been 20’ as long as the dwelling is within the 50’ setback as Mr. Landry’s  
72 plans show.

73 One Board member stated that the change was proposed to help existing property owners who  
74 couldn’t fit accessory structures like sheds, garages, and porches within the 50’ setbacks. The  
75 ZBA has never had a septic issue come before the Board.

76 Mr. Colby replied that the PB has seen the septic issues not the ZBA.

77 It was stated that it would change the character of subdivisions if we grant this so a thorough  
78 public discussion should be had before a wide range of change is made.

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79 Mr. Russo stated that the proper process was followed in making this change however he felt “it  
80 got politically high jacked at the Planning Board when the discussion at the public hearing came  
81 up.” He also feels that a septic tank and a leach field is part of the primary structure even though  
82 that is not what the state code says.

83 Mr. Colby agreed with the ZBA’s consensus that the PB needs to make changes to this  
84 Ordinance and the PB is already aware of this necessity, however, it cannot be done until March  
85 2017 at the Town Meeting Elections. Until then cases that conflict with this Ordinance must be  
86 sent to the ZBA for relief.

87 The conflicting issue is from the Zoning Ordinance Article II C,1,c: “Each lot must contain a  
88 200’x 200’ square fit for building or a thirty thousand (30,000’) square foot contiguous area lot  
89 envelope in which **a house and septic system** shall be placed to meet all existing setbacks  
90 ordinances...” Which led the Town Attorney to determine that the more stringent setback must  
91 be used as the setback for the house and septic system. The stringent setback comes from the  
92 Zoning Ordinance Article II C, 2: “2. There shall be between the property line, water’s edge  
93 (“reference line” as described in RSA 483-B:4 XVII), and **any dwelling, a minimum distance**  
94 **of fifty (50’) feet**, twenty (20’) feet for grandfathered non-conforming lots of less than two (2)  
95 acres, as of the date of passage (03/08/94), **in all directions.**” Even though that article continues  
96 with: “**Setbacks for accessory buildings including septic systems shall be fifty (50’) feet**  
97 **minimum distance from the lot frontage property line** (20’) feet for grandfathered non-  
98 conforming lots of less than two (2) acres **and twenty (20’) feet minimum distance from the**  
99 **side and rear property lines.**”

100 Mr. Colby added that the zoning change was not sent to an attorney for review prior to the  
101 election. This practice prevents errors, like conflicting setback issue, this from occurring.  
102 The majority of the Board agreed that erring on the side of caution and agreeing with the PB is  
103 best, not knowing what the intent of the Zoning Ordinance change was and it can be interpreted  
104 either way.

105 The Board members agree that it is confusing that the Planning Board allowed the past cases to  
106 be subdivided and built with the 20’ setbacks and then dis-allowed this case.

107 Mr. Russo added that he feels that by relieving the septic area to the 20’ setback it creates a  
108 takings issue, because an abutter would have less room for placement of a well, due to setback  
109 requirements for septic from wells and that this should be a Supreme Court issue to decide due  
110 to the mistakes made in the setbacks.

111 The Board would be more comfortable leaving the decision of changing the setbacks to the  
112 voters rather than making the decision to do so at this meeting.

113 **Motion made by:** Ms. Winona-MacKinnon to “deny this application and uphold the decision of  
114 the Nottingham Planning Board.”

115 **Seconded by:** Mr. White

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

117 **Case Closed:** 8:08pm

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118 The Board discussed the fact that more changes to the Zoning Ordinance are needed. The Land  
119 Use Clerk agreed to send the ZBA the list of action items that she has so they can add to them  
120 prior to the joint meeting the ZBA and PB plan to have the end of the summer.

121 **Ms. Bascom was reseated**

122 **Sign updated By Laws**

123 **Motion made by:** Mr. Russo to approve the By Laws as amended

124 **Seconded by:** Mrs. Bascom

125 **Discussion:** Mr. Basset asked for a moment to review before voting. He was then informed that  
126 they are the same as every year with the one edit of stating that “A Clerk *may* be elected” instead  
127 of “A Clerk *shall* be elected”.

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

129 **Minutes**

130 April 19, 2016

131 **Motion made by:** Mr. Russo to approve the minutes of April 19<sup>th</sup> as written.

132 **Seconded by:** Mr. Bonser

133 **Vote:** 5-0-1- **Motion Passed**

134 **Adjournment**

135 **Motion made by:** Mrs. Bascom to adjourn

136 **Seconded by:** Mr. Russo

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

138 **Adjourn at:** 8:22 pm

139 For the Nottingham Zoning Board of Adjustment

140 JoAnna Arendarczyk; Land Use Clerk