

Zoning Board of Adjustment
June 12, 2018
7:30pm

Voting Members: Curt Springer, John Russo, Roger Whitehouse, Walter Baird, Michelle Cooper

Others Present: Ernest Brown, Chip Current, Dennis Stasio, Mary Ann Stasio

John made and Walter seconded a **motion to appoint Curt as chairman for this meeting**. The motion **passed**. Curt appointed Michelle as a voting member.

2018-2: Appeal from an administrative decision, 227 Main Street, aka: 1 Sweet Street, M&L 3-59-13

Ernest said that when he bought the property, the seller said there was no impact fee associated with the lot. When he then spoke with the building inspector to get a permit to build a home, he was told an impact fee is due.

He explained the two-lot subdivision and that an impact fee was paid for 3 Sweet Street. He said he reviewed the Planning Board minutes and found the following:

- Oct. 9, 2014: “It was agreed that only one impact fee will be assessed....” This purportedly means 3 Sweet Street.
- Oct. 23, 2014: listed as an outstanding item from the prior meeting is that impact fees will be reviewed when final approval is granted.
- Dec. 11, 2014: final approval is granted but impact fees were not addressed.

No impact fee has been paid yet. A building permit was issued on January 31st this year and the permit states that the impact fee was to be discussed with the ZBA. Mr. Brown said that no one told him about the 30-day appeal period. He had approached Bob Bogosh about the impact fee but was told, since Bob was acting as interim inspector, he would not make a decision regarding this. Mr. Brown then asked the office to hold the application until a permanent inspector was hired.

Chip Current introduced himself as the vice-chair of the Planning Board (PB) both in 2014 and currently. He said he remembers this subdivision and it is what prompted the PB to want to revise the Zoning Ordinance (ZO), which it did via warrant article. He said that he is not sure the PB was allowed to waive the fee with the way it was written when the subdivision was approved. He said the PB’s decision was made with the idea that the existing structure should have had a grandfathered status regarding the impact fee, but the newly created lot would have an impact fee levied.

Mr. Current further explained that the PB realized in 2016 that there was no way to waive a fee for structures that were destroyed due to fire or weather or other sudden events out of control of

the homeowner. The ZO was further revised via March 2017 warrant article to allow a two-year window in which a structure could be rebuilt without incurring an impact fee.

There was a discussion about how long the home on 1 Sweet Street, formerly known as 227 Main, was vacant. Mr. Current said it had been vacant at least 17 years before it was razed. The demolition permit was issued in April 2015. Mr. Brown said, and Mr. Current confirmed, that the two-year window was not in effect when the subdivision was approved. Mr. Current said the PB thought it was wrong to have to pay an impact fee if a structure was razed, then rebuilt.

The audience members were asked if there were any questions. Dennis Stasio introduced himself as the owner of 3 Sweet Street and he was just there to observe.

Curt said the key may be the time that the house was vacant. The time between the demolition permit and building permit was about three years. Mr. Current said the intention behind the ZO revision was to grant a two-year window from the time of demolition to the time the certificate of occupancy is issued. Michelle asked about a right to extend the time frame. She referred to a five-year extension which it was pointed out refers to something else.

The letter from Bob Bogosh was read.

Mr. Brown found the receipt for his application which is dated February 12. He said there were many things going on from that time until now that caused him to not pursue this immediately. Michelle said there was a good faith effort to pursue the appeal.

Curt closed the public hearing.

Curt said he was ready to make a motion to deny the request due to the application being dated April 30, a building permit being issued January 30, and our rules of procedure stating appeals must be made within 30 days of the decision. He suggested taking the date the check was received, February 12, as the date the appeal was made. This would be within 30 days of the building permit and decision to levy the impact fee, which was February 12. It was agreed the appeal was made in a timely manner.

Curt said the key concept is the two-year window. Roger said the date of the demolition permit should be the date we use as the beginning date. As revised in 2017, the ZO allows a two-year window and the actual duration in this case is three years.

Roger said it seems due diligence was not made by someone because it appears the PB waived the fee, but it took longer than two years to build the home.

Curt said that when the PB approved the subdivision, there was a structure on this lot and it seems the PB intended to only levy an impact fee on the new lot. Had the new house been built in a timely manner or the old house been left there, there would not be an impact fee. If it had

been torn down in April 2017 after the ordinance was changed, then built in 2018, the fee would not have been charged. Similarly, any house in town that is razed, then two years and one day passes before being rebuilt, a fee would be charged under this ordinance. Curt said the circumstances under the subdivision and the circumstances regarding the replacement of the house are not connected.

Walter said the new zoning went into effect March 11, 2018. Neither the demolition permit nor the intent of the PB have anything to do with this issue. His opinion is that the crux of the issue is the timing of the application. On one hand, we can say the date of the appeal is April 30 which would be more than 30 days from the decision. Michelle said she felt the date of the appeal should be February 12. There were valid reasons to not push the issue at that time. The town was not equipped to deal with this until a date beyond 30 days of the decision.

Curt said whatever decision this board makes must hold up in court. Walter said the rules of procedure say nothing about date of payment; it seems to be all about the date of the appeal.

It was agreed to seek legal advice. Walter made and Roger seconded **a motion to have Curt contact the town attorney to ask is it possible to decide based on the date of the payment or the actual appeal documentation.** The motion **passed** unanimously.

Walter said this is a perfect example of what Attorney Matt Serge suggested regarding an additional provision in our rules of procedure regarding the ability to waive the timeframe. Peter Loughlin has commented also that this is a good idea.

Curt said he will contact Chris Stafford as well.

Roger made and John seconded a **motion to continue on the 19th.** The motion **passed** unanimously.

At 8:35 Walter made and Michelle seconded a **motion to adjourn.** The motion **passed** unanimously.