

WRITTEN DECISION

ADMINISTRATIVE APPEAL OF DURANT EXCAVATING, LLC DECEMBER 21, 2021 NOTICE OF VIOLATION PERTAINING TO 18 FERNWOOD ROAD

Town of Raymond Zoning Board of Appeals

FINDINGS OF FACT AND CONCLUSIONS OF LAW / NOTICE OF DECISION

**Re: Administrative Appeal by Durant Excavating, LLC of NOV issued 12/21/2021
Regarding 18 Fernwood Road (001/022/000; Zone LRR2)**

Date of Decision: August 30, 2022

Date of Written Decision: September 6, 2022

Pursuant to Section 16(G)(3)(b)(6) of the Shoreland Zoning Provisions a copy of this written decision will be mailed or hand-delivered to the Department of Environmental Protection no later than 7 days from the date of the written decision.

This administrative appeal of the December 21, 2021, Notice of Violation (“NOV”) concerning 18 Fernwood Road (001/022/000), came before this Board upon Durant Excavating, LLC’s (“Durant”) Notice of Appeal filed by hand on March 3, 2022, pursuant to Section 16(G)(1)(a) of the Town of Raymond Shoreland Zoning Provisions (last amended June 7, 2016) (“SZO”). The Board of Appeals held a *de novo* public hearing on this Appeal on July 26, 2022, which was continued to August 30, 2022.

The following members heard this appeal: David Murch, Fred Miller, Pete Lockwood.^{1 2 3}

On August 30, 2022, based on the following record, findings of facts, and conclusions of law, the Board voted unanimously to deny the appeal on the grounds it was untimely.

Contents of the Record

The record for this appeal consists of all of the materials submitted by the parties in advance of the March 29th hearing and the hearing held on July 26, 2022, with the exception of the following materials which were excluded from the record by a unanimous vote of the Planning Board: an email from Attorney Eric Wycoff to Alex Sirois and Chris Hanson, dated March 22, 2022, at 21:32:28, which was subsequently forwarded to the Board; and an email from Attorney

¹ Fred Miller *sua sponte* raised the issue of whether he should be recused from this matter because he previously performed flooring work at 18 Fernwood about 5 years ago for a previous owner. The Board moved to accept Miller as having no conflict of interest with a vote of 3 in favor, 0 opposed, and 1 abstention.

² At the July hearing, members Greg Dean and Tom Hennessey also participated. Over the objection of Durant, on August 30th, the Board continued to hear the appeal with its quorum consisting of the three members named in this written decision.

³ By requesting deliberations be continued, the parties have waived any objection that may be made pursuant to Shoreland Zoning Provisions Section 16(G)(3)(b)(5) that the parties are entitled to a decision within 35 days after the close of the hearing.

Leah B. Rachin to the Administrative Assistant to the Board, Sandy Fredricks, dated March 29, 2022 at 12:10 (with enclosures via link) . Additionally, the record includes by a vote of 3 to 1 a March 28, 2022, letter to David Murch from the State of Maine Department of Environmental Protection (“DEP”). All record materials are available at <https://www.raymondmaine.org/content/agenda> and <https://www.raymondmaine.org/boards-committees/zoning-board-appeals>, and are on file with the Town of Raymond. The record also includes a letter from Q-Team’s Aaron Gosselin that is undated and was provided to the Board by email through counsel on July 26, 2022.

At the July 26th meeting, it was acknowledged by all parties and the Board that much of the evidence introduced and argument made pertaining to this appeal are relevant and duplicative of the arguments and evidence pertaining to the other 5 related appeals concerning 18 Fernwood and 28 Whitetail and, therefore, the record for 5 related appeals shall include but is not necessarily limited to this record.

Findings of Fact and Conclusions of Law

Upon a motion by the Town to dismiss the appeal on the grounds it was untimely, the Board first took up the issue of whether the appeal was timely and, therefore, the Board had jurisdiction to consider the merits.

The Board unanimously made the following findings: the NOV is dated December 21, 2022; the application is dated February 24, 2022; the application was not received by the Town until March 3, 2022, after the 30-day deadline provided by SZO § 16(G)(3)(a)(1) (that deadline being January 20, 2022); Durant is an entity controlled by Rob Durant and Rob Durant had actual notice of the NOV.

The Board next considered whether there was sufficient good cause to waive the 30-day deadline pursuant to section 16(G)(3)(a)(1). It considered the oral and written opinion of counsel that a Board should find good cause only if it determines, based on the totality of circumstances, that not extending the deadline would result in a flagrant miscarriage of justice. Based on the above factual findings, the Board unanimously found there was not good cause. Therefore, by a unanimous vote, the Board dismissed the appeal as untimely.

Decision

Based on the above findings and conclusions, the application for an administrative appeal is DENIED.

NOTICE: This decision may be appealed to the Superior Court within 45 days from the original Date of the Decision noted above by any aggrieved party who participated as a party during the proceedings before the Board of Appeals.

So ordered,

Town of Raymond Board of Appeals



David Murch, Chair



Pete Lockwood



Fred Miller