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Subject: Objections to Brian Johnson's "special permit application" (this is how it is labeled by ZBA) but Johnson writes that he is seeking a "variance"
Date: Sat, 29 Nov 2014 10:41:40 -0500
From: Dana Manning <emancipateddana@gmail.com>
To: zba@townofholland.necoxmail.com

DATE: November 28, 2014

TO: Zoning Board of Appeals

FROM: Dana Manning

RE: December 23rd hearing for Brian Johnson's "project" as referred to in document #7599 (or 1599 I can't read it) as outlined on procedure sheet signed by Jack Keough October 21st, 2014.

I have many concerns and would like to raise several objections to the "project" Brian Johnson has submitted pertaining to his property located at 61 Stafford Road.

It should be obvious that laws and by-laws are put into place so that everyone may be treated equally. It should be obvious that town officials should not be granted a variance or special permit simply because they are town officials. It should even be obvious that town officials must meet the same criteria for hardship or the same conditions for special permits as any other applicants, who are not a town officials. Despite the obvious there are too many examples in Holland where town officials on prior boards have not always done the right thing, favor has been shown and there are many clear and repeating examples of unequal treatment. I ask that the Zoning Board of Appeals do the proper research and take the requisite time to look into Johnson's proposed project at 61 Stafford Road. If you do your job in earnest you will have no choice but to deny the project.

Here are my concerns:

1) It is not clear whether Brian Johnson is seeking a special permit or a variance for his "project." On the ZBA memo signed by Fred Beaulieu (dated 10-30-2014) Mr. Beaulieu, the ZBA chairman, refers to Johnson's application for his project as a "SPECIAL PERMIT application." Yet on the application that Brian Johnson filled out in his own handwriting, Johnson seems to be applying for a "VARIANCE."

The ZBA does not grant special permits. (The Planning Board is the authority for granting Special Permits.)
The ZBA does grant variances, however to vary the terms of the by-law an individual must CLAIM, AND PROVE that they have a hardship.

2) As Johnson is seeking to vary the terms of the by-laws I conclude his application to the ZBA is a request for a variance.

3) Holland bylaw requires 200 feet of frontage along the road. Johnson has 110 feet of frontage on Stafford Road. Johnson's lot is therefore 90 feet short of the required frontage. For this reason Johnson needs a variance to vary from the terms of the bylaw, however, not having enough frontage does not even come close to the threshold to prove HARDSHIP. Nor has Johnson ever claimed that a hardship exists.

4) Johnson's property is nonconforming. Contrary to Jack Keough's belief, that Johnson's lot "meets all the requirements for a protected [grandfathered] lot," it does not. Only a lot which is pre-existing non conforming would meet the criteria of a protected lot. Johnson's lot is NOT pre-existing non-conforming and IS NOT GRANDFATHERED, nor can it ever be grandfathered because there are no set of facts that can grandfather a lot that was in common ownership over 20 years ago. Here is the history:

HISTORY:

1) Karl G Bopp was the owner of all the land of which the Johnson property is comprised of back on December 27, 1957, see plan book 63, page 111.
2) Karl G Bopp conveyed lot 8 to Walter Woods on 1-3-1958, see deed book 2587, page 493
3) Karl G Bopp conveyed lot 1 to Walter Woods on 10-6-1958, see deed book 2635, page 171
4) Walter Woods filed an ANR plan on March 8th, 1990, see plan book 272, page 26, creating lot 9 as part of lot 8.
5) Some time before 1994 the frontage requirement increased from 100' to 200'.
6) Lot 1 and lot 8 were in common owner ship by Walter Woods at the time the frontage requirement increased from 100' to 200'.
7) Lot 1 and lot 8 stayed in common ownership untill 2001-07-24 when Woods conveyed lot 1 and lot 8 to Brian Johnson, see deed book 11769, page 476.

ANALYSIS:

M.G.L., c.40A, s.6 (the grandfather clause) provides in part,

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements […] This means that the change in the bylaw DOES APPLY to lots in common ownership. This lot was in common ownership by Woods (see above) when the zoning bylaw changed from 100 feet of frontage to 200 feet of frontage. (emphasis added) Johnson's lot is not pre-existing nonconforming.

s.6 grants grace periodes of three years (lots shown on ANR plans), and five years (lots shown on subdivision plans).

Lot 1 8 and 9, the Woods and Johnson property, were held in in common ownership by Woods until 7-24-2001, well beyond any grace period which would have saved the lots from becoming non conforming. The oldest copy of the zoning bylaws that I have here with me at home is 1994. In 1994 the required frontage was already 200 feet. The ZBA will most certainly be able to pin down the EXACT DATE of the zoning bylaw change (it may be earlier than 1994) but if the 200 feet of frontage was in effect in 1994 and the land remained in common ownership until 2001 (and it did) then the bylaw requiring 200 feet of frontage applies. The lot cannot be grandfathered. The lots ARE NOT pre-existing nonconforming.

The building permit issued to Brian Johnson was in error as the lot was not pre-existing none conforming pursuant to c.40A, s.6.

The letter attached to Johnson's application dated May 18, 2004, and signed by Jack Keough, the building inspector is a falsehood. Jack Keough has made an error in describing the lot as meeting

all the requirements of a protected lot. Jack Keough's error becomes clear if you know the date of the bylaw change (1994 or earlier), and understand that according to M.G.L.c.40A that the increase in frontage of our bylaw applies to lots in common ownership but does not apply to lots NOT IN common ownership, (this property was in the common ownership of Woods until 2001.)

Keough's letter correctly claims that the lot was legally existing prior to the adoption of the Town of Holland's Zoning Bylaw. (See items 1,2 and 3 above under history) But his letter then claims, in error, that, "the lot meets all of the requirements for a 'protected' lot as per MGL Chapter 40A Section 6. As such, this lot is 'Grandfathered' or 'Protected for the construction of a Single Family Dwelling and it's allowed accessory uses." This claim is incorrect as the Johnson property was in common ownership with the Woods property and therefore NOT 'Protected' NOR "Grandfathered."

Another question to carefully consider is this: Why does Brian Johnson apply for a variance at all? If he truly believes his property is "grandfathered", then what does he seek a variance for?" The zoning by law clearly states that in order apply for a special permit for an accessory dwelling you need to have 2 acres of land and 200 feet of frontage. So, is Johnson asking the ZBA to vary the conditions of the planning Board's discretionary special permit? WHERE…..IS…..THE HARDSHIP?? There is none.

Johnson should never have been able to obtain a building permit to build a house in 2004. In 2001 when Woods conveyed lots 1 and lot 8 over to Johnson (see history #7 above), the bylaw requiring 200 feet of frontage was already in effect. The bylaw applied to the Woods land because it remained in common ownership until 2001. In 1990 when Woods filed his ANR, his 3 year clock started ticking. Woods (or somebody else) needed to build a house on lot 1 within 3 years in order for it to qualify as "grandfathered." His opportunity to do this expired in 1993. The lot became nonconforming. Nonconforming lots can never be grandfathered and the 2004 building permit issued by Jack Keough was issued in error.

At what point in time will the town bylaws actually be correctly applied to Johnson properties? Should the ZBA incorrectly and inappropriately issue this variance (no hardship) will the Planning Board be able to deny the project? Johnson does not have 200 feet of frontage, but is that what he's asking to vary (again with no hardship….) Johnson has not even submitted a current site plan for the Planning Board to be able to evaluate the project.

I am concerned that this entire fiasco is going to become a problem for the Board of Health. If the ZBA issues a variance despite the fact that there is no hardship, and then the Planning Board issues a special permit despite the fact that there is not enough frontage then Johnson will return to the Board of Health looking for approval on his septic plan. Mr. Johnson has already been to the Board of Health to look at his current septic plan. The plan shows a three bedroom house and a 4 bedroom system. I pointed out that he is already at capacity because the Bobby Herrell, the second shift janitor already lives in Johnson's garage. Johnson admitted the garage is already hooked into the septic system, but then claimed that the system was no at capacity because the janitor lived in the house with the rest of the family, not in the garage.

Johnson himself lived in the garage/accessory dwelling when the [illegal] home was under construction.

Further, the plans Johnson has submitted thus far to ALL boards are thoroughly inadequate. There is no proof of hardship being provided to the ZBA. The "site plan" submitted to the Planning Board is a for "bank use only" (which is printed right on it) and is dated 2004, and no new septic plan was submitted to the Board of Health, yet Johnson needs to increase his system by one bedroom if he is in some fashion constructing another bedroom on his property as his current

system is at capacity. Instead of providing a plan to expand his septic system Johnson tried to bully the Board of Heath to approve his already existing system as part of the new project.

To grant a variance in this case would clearly be outside the law. The claim of hardship has not been made and no evidence to support a hardship is provided. The request for a variance is simply a way around the inability to meet the 200 foot frontage requirement. To grant a special permit in this case would also be outside the law, and last to allow a 4 bedroom septic system to service 5 (or more) bedrooms is a clear violation of 310 CMR better known as Title V and would also clearly be outside the law. If the law had been followed in 2004 Johnson should never have been given a building permit. It does not make sense to make a mistake on top of a mistake. Johnson, a town official, is asking for special treatment. As town officials, myself included, we need to be role models and act with integrity.

In conclusion please consider this:
In the future then what set of facts could possibly be the grounds for a denial of ANY application for a variance? If you don't follow the law here (the law requires a true hardship), then the only reason you leave available to deny future applicants is that they are unpopular, rabble raisers or always filing frivolous lawsuits. We took an oath of office and therefore it is our duty to follow the law. There is no lawful remedy to grant Johnson a variance. I have done a deed search and will be happy to share with the ZBA the documents listed in the history (1-7) above.

Thank you for you time.

Dana Manning
Board of Health

Please feel free to call me at your convenience (508) 864-3290

4) Brian Johnson claimed during a BOH public meeting that Bobby Herrel, the evening shift Janitor for the Holland Elementary School is currently living in his 3 bedroom residence and not in his adjacent accessory building/garage.