

ADMINISTRATIVE APPEAL

Findings of Fact: The appellants are Joseph J. Jason 115 Elmwood Boulevard, York PA 17403 and Daniel Raposa, 660 York Street, York ME 03909. Properties in question are located at 4 Glenn Lane & 660 York Street. REF: Map 45, Lot 13S and Map 46, Lot 13.

Copies of: Board of Appeals Application for Administrative Appeal, Authorizations for Attorney, Warranty Deed dtd May 15, 2008, Warranty Deed dtd July 18, 2006, GIS map, Planning Board Findings of Fact dtd Oct. 26, 2017, Statement of Appeal, Email from Sandra Guay dtd Oct. 12, 2017, Certificate of Notice, Abutter Report, Abutter Notification, Emails from Amy Phalon dtd Oct. 10, 11 & 12, 2017 forwarding Emails from abutters, Ltr from Joseph Jason dtd Oct. 9, 2017, Tax Assessor's record for 650 York Street, Ltr from The DeStefano's dtd Oct. 9, 2017, Ltr from Denise Lapins dtd Oct. 12, 2017, Dylan Smith Memo to Planning Board dtd Oct 10, 2017, Atty Costigan Memo to Dylan Smith dtd Oct 10, 2017, Ltr from The DeStefano's dtd Jan. 22, 2018, are all made part of the record.

The appellants request an Administrative Appeal in regards to a decision by the Town of York Planning Board concerning the Gorgeana Colony Subdivision. The appellants have standing as abutters and residents of the subdivision. The appeal was timely filed on December 29, 2017.

The relevant sections of the Zoning Ordinance are §18-A.5.G, §18-A.5.E.2, Article 2, §18-A.5, §18-A.5.E and §18-A.5.D.4 .

The appeal was heard on January 24, 2018. A video recording of the meeting was made as part of the official record.

Relevant facts are: 1) On Dec 8, 2016, the Planning Board approved changes to the Gorgeana Colony Subdivision Plan allowing the removal of Lot 60 from the subdivision. This was as part of an Application for Planning Board approval by Joshua Gammon and Diane Marcuri to allow the division of Lot 0046-0011 (into which Lot 60 had been merged) and Lot 0046-0017A. 2.) §18.A.5.G states that Plans (Mylar) shall be submitted within 30 days of the relevant vote and shall be signed by the Board within 30 days of submittal; 3) On October 12, 2017, property owner Josh Gammon presented the Mylar for the approved change and requested the Planning Board's signature. 4) Town Attorney Mary Costigan and Town Planner Dylan Smith advised the Planning Board that they could sign the Mylar without another public hearing since they had already voted to approve the application and the Findings of Fact, dated Dec 8, 2016; 5) Due to incorrect abutter notifications for the Oct 26, 2016 Planning Board hearing, some abutters did not receive notice of the application until October 2017 and therefore did not have the opportunity to address the Planning Board at that time. 6) On Oct 12, 2017, the Planning Board voted to sign the Mylar for the Subdivision revisions. 7.) The Planning Board did not allow public comment on Oct 12, 2017 prior to voting on Mr. Gammon's and Ms Marcuri's request to the Board to sign the Mylar. 8.) In a hearing on Oct 26, 2017 the Planning Board Chair read a summary of the comments that had been received.

Conclusions of Law: 1.) Sub division regulations do not set out a time frame for recording the plan. §18-A.5.G does require an applicant to submit plans for signature within 30 days of the vote. Mr. Gammon did not submit the plan within the 30 days and instead submitted it in Oct 2017; 2.) In the event the applicant does not meet the submittal deadline §A.5.G also gives the Board the option to vote to deny without prejudice. 3.) In this regard the ordinance specifically uses the word “may”, it does not use words such as “is required or must”; the Board voted to approve signing the Mylar, this was within the Boards’s discretion and appropriate since the decision to allow the removal of Lot 60 had already been approved on Dec 8, 2016. 4.) The failure by the Board to provide proper notice of the Nov 10, 2016 hearing is outside of the timeliness limits of this appeal. 5.) A public hearing on the removal of Lot 60 from the Georgeana Colony Subdivision had already occurred before the Dec 8, 2016 Findings of Fact; 6.) The Planning Board’s decision to sign the Mylar was dispositive of whether there would be a requirement for an additional public hearing or to have written comments read into the record per §18-A.5.E.2. 7.) The Planning Board Chair did not err in her ruling to refuse additional public comment.

MOTION by Ms. Garon, seconded by Mr. Swant, to deny the Administrative Appeal of Joseph J. Jason, 115 Elmwood Boulevard, York PA and Daniel Raposa, 660 York Street, York ME regarding the Administrative Appeal concerning properties located at 4 Glenn Lane & 660 York Street, Map 45, Lot 13S and Map 46, Lot 13 in the Board of Appeals Finding that the Town of York Planning Board did not err in their decision concerning the Gorgeana Colony Subdivision and the actions that they took on those Findings and the signing of the Mylar.

VOTE: Passed 5-0 (Ms. Garon, Mr. Woods, Mr. Lascelles, Mr. Carr, Mr. Swant)

Judgment on Findings of Fact: 28 Feb 2018

Voted: Approved 3-0-2

(In Favor: B. Garon, J. Carr and R. Lascelles; Opposed: NONE; Abstained due to absence: M. Swant and D. Woods)

