



Town of Chebeague Island

192 North Road

Chebeague Island, ME 04017

www.townofchebeagueisland.org

Findings of Fact & Conclusion of Law

Date: November 17, 2022

Application Type: Administrative Appeal

Applicants' Names: Courtney Doughty and Justin Doughty

In re property located at: Tax Map I-06, Lot 018-002

Zoning District: Island Residential (IR)

This is to inform you that the Board of Adjustment and Appeals has acted on your application for an administrative appeal as follows:

Project Description:

Applicants Justin and Courtney Doughty filed an administrative appeal of the Code Enforcement Officer's failure to enforce the Zoning Ordinance

Prehearing Findings of Fact:

- According to Zoning Ordinance §603.2, the Board shall have the following powers and duties: A. Interpretation. Upon appeal by from a decision of the Code Enforcement Officer where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by the Code Enforcement Officer the Board shall determine whether the decisions of the Code Enforcement Officer are in conformity with the provisions of this Ordinance, and interpret the meaning of the Ordinance in cases of uncertainty.

HISTORY

- Justin and Courtney Doughty live at 321 North Road (owners of record of lot I-06-19A) and are direct abutters of Map I-06 lot 018-002, at the corner of Haskell and North roads.
- They have been corresponding with the town and the Code Enforcement Officer since at least 7/30/21.
- The lot in question was granted to James M. Fowler, Jr., for \$1 by quitclaim deed from Roger and Susanna Haskell on 7/30/19 (Cumberland County Registry of Deeds Bk 35849; Pg 294).
- The CEO states in an email dated 9/12/22 to the applicants that "this started happening before I became code officer on the Island."
- James Butler has been the Code Enforcement Officer for TOCI since at least 5/2/19.
- Jim Fowler is the owner of Lot 18 but does not reside there, nor is there any sort of residential structure on the property.
- Both properties are in the Island Residential (IR) district (Zoning Ordinance Appendix A).
- Both properties are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).



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- Where uncertainty exists as to the exact location of district boundary lines, the Board of Adjustments and Appeals shall be the final authority as to location.
- According to §603.3.C., “the Code Enforcement Officer, unless prevented by illness or absence from the State, shall attend all hearings and shall present to the Board all plans, photographs, or other factual materials which are appropriate to an understanding of matters before the Board.”
- The Zoning Ordinance contains no definition of a “Contractor Storage Yard,” nor any ordinance related to a contractor storage yard.
- The CEO cannot base any rulings or path of action on a nonexistent ordinance, even if it is one that “would make sense for the planning board to make some amendments to the zoning ordinance and to include that definition and to decide how they would like to handle that activity.”
- According to Zoning Ordinance §601.2, if the Code Enforcement Officer **shall find that any provision of this Ordinance is being violated**, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- Contrary to the CEO’s 10/19/22 statement to the Doughtys that “We can’t single out one property owner. This enforcement would need to be town wide,” §601.1 clearly states that “it shall be the duty of the Code Enforcement Officer **to enforce the provisions of this Ordinance**. The Selectmen and Town Administrator shall assist the Code Enforcement Officer by reporting to him any new construction or use of land, and apparent violations of this Ordinance.”
- According to Zoning Ordinance §601.4, **the Code Enforcement Officer shall keep a complete record of all essential transactions of the office**, including application submitted, shoreland zoning permits granted or denied, variances granted or denied, revocation actions, revocation of shoreland zoning permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- Other than the appeal currently before the board, there is nothing else in the file for the Fowler lot.
- There is no record of the statement by the CEO to the Doughtys that “[t]here has [sic] been complaints and there has [sic] been letters and phone calls” about the property made since at least 7/30/21.
- There is no record of the Notice of Violation said to be pending as of 7/30/21.



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- There is no record of a "Consent Agreement" between Fowler and the TOCI.
- There is no record of the "list of action items" given to Jim Fowler to complete.
- There is no record of any meeting between the CEO and Jim Fowler.
- There is no record of any conversations between the applicants and the CEO or between the CEO and the "town legal."
- There is no record of the CEO's "sharing his findings" with the Selectboard.
- In the IR district, running a business is, with few exceptions, not a permitted use (§204.1A).
- The CEO posits that "if we utilized the strict definitions within our ordinances," it would impact "many similar uses." There is no ordinance allowing a less than strict definition of "our ordinances."
- The CEO states on 9/2/21 that he "called the owner to discuss the complaint" and "the following week we walked the site and it was cleaned up substantially."
- There is no record of this site walk.
- **ISLAND RESIDENTIAL (IR) AND ISLAND BUSINESS (IB) ZONING**
- In the IR district, the following is allowed as a special exception, requiring the approval of the Board of Adjustment and Appeals: Any use permitted in Island Business (IB), subject to Site Plan Review (§204.1.B).
- The board has not received an appeal for a special exception regarding this property.
- Running a junk yard, a lumber yard, or a tree removal and processing business (sic) is not a permitted use in the IB district (§204.2).
- According to §206.2.D, a person who has right, title, or interest in a parcel of land must obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading: D. The establishment of a new use even if no buildings or structures are proposed, including uses such as gravel pits, cemeteries, golf courses, and other non-structural nonresidential uses.
- According to §414, the business does not meet the definition of a "home occupation" or "home-based occupation"—an occupation based or located **within a dwelling or an accessory structure** which is performed or conducted at a location or locations remote from the dwelling and which: A. Is accessory to a residential use; and B. Is clearly incidental and secondary to the residential use of the dwelling unit; and C. Does not change the character of the dwelling.
- The Zoning Ordinance contains no definition of a "Contractor Storage Yard," nor any ordinance related to a contractor storage yard.
- **AQUIFER RECHARGE AREA**
- Both the Doughty property and the Fowler property are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).



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- According to CHAPTER 3 PROTECTION AND IMPROVEMENT OF WATERS SUBCHAPTER 1 ENVIRONMENTAL PROTECTION BOARD ARTICLE 1 ORGANIZATION AND GENERAL PROVISIONS M.R.S.A. §301.1-C, "aquifer recharge area" means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers. [PL 1979, c. 472, §8 (NEW).
- Aquifer protection is covered in Zoning Ordinance §300.
- §303.2 states that the following uses shall only be allowed upon a positive finding by the Planning Board that the proposed use, with any conditions imposed by the Board, will not adversely affect the quality of groundwater: E. Storage of petroleum or other refined petroleum products, with the exception of petroleum products used for household purposes; F. Disposal of other leachable materials, with the exception of single-family and two-family residential septic systems.
- The Board found the application to be complete on November 17, 2022.

Statement of the Facts Found and Conclusions

In the absence of the CEO himself and the absence of any written, official record of the history of this complaint, we must rely solely on the presentation by the applicants to confirm or deny this appeal

1. Tad Runge moved to vote that the applicants have met the burden of proof in this appeal, and Cheryl Stevens seconded the motion (vote 4:0).
2. Tad Runge moved to vote that the Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance, and Cheryl Stevens seconded the motion (vote 4:0).
3. Tad Runge moved to vote that the owner of lot I-06-018-002 is operating an unpermitted business in the Island Residential Zone, and Charles Hall seconded the motion (vote 4:0).

Decision

Based on the findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted (4:0) as follows:

The applicants have met the burden of proof in this appeal (4 : 0).

The Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance (4:0).

The owner of lot I-06-018-002 is operating an unpermitted business in the Island Residential Zone (4 :0).

The Board of Adjustment and Appeals has voted to grant the appeal (4:0).



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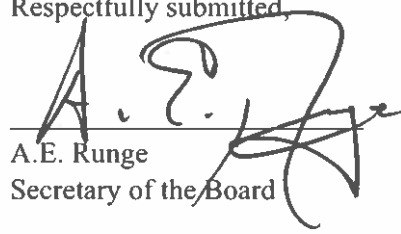
CONCLUSION:

The Board reviewed the evidence and found that there was substantial evidence in the record supporting the granting of the **Administrative Appeal** and based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustments and Appeals voted (4:0) to **APPROVE** the Administrative Appeal.

Date Approved: November 21, 2022
Town of Chebeague Island Board of Adjustment and Appeals

Pursuant to Ch. 17 Art. II, § 603.4.D of the Zoning Ordinance, this decision can be appealed in the Superior Court within forty (45) days.

Respectfully submitted,


A.E. Runge
Secretary of the Board



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Findings of Fact & Conclusion of Law



Date: November 17, 2022
Application Type: Administrative Appeal
Applicants' Names: Courtney Doughty and Justin Doughty
In re property located at: Tax Map I-06, Lot 018-002
Zoning District: Island Residential (IR)

Dear Mr. Fowler:

This is to inform you that the Board of Adjustment and Appeals has acted on Justin and Courtney Doughty's application for an administrative appeal as follows:

Project Description:

Applicants Justin and Courtney Doughty filed an administrative appeal of the Code Enforcement Officer's failure to enforce the Zoning Ordinance

Prehearing Findings of Fact:

- According to Zoning Ordinance §603.2, the Board shall have the following powers and duties: A. Interpretation. Upon appeal by from a decision of the Code Enforcement Officer where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by the Code Enforcement Officer the Board shall determine whether the decisions of the Code Enforcement Officer are in conformity with the provisions of this Ordinance, and interpret the meaning of the Ordinance in cases of uncertainty.

HISTORY

- Justin and Courtney Doughty live at 321 North Road (owners of record of lot I-06-19A) and are direct abutters of Map I-06 lot 018-002, at the corner of Haskell and North roads.
- They have been corresponding with the town and the Code Enforcement Officer since at least 7/30/21.
- The lot in question was granted to James M. Fowler, Jr., for \$1 by quitclaim deed from Roger and Susanna Haskell on 7/30/19 (Cumberland County Registry of Deeds Bk 35849; Pg 294).
- The CEO states in an email dated 9/12/22 to the applicants that "this started happening before I became code officer on the Island."
- James Butler has been the Code Enforcement Officer for TOCI since at least 5/2/19.
- Jim Fowler is the owner of Lot 18 but does not reside there, nor is there any sort of residential structure on the property.
- Both properties are in the Island Residential (IR) district (Zoning Ordinance Appendix A).
- Both properties are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).
- Where uncertainty exists as to the exact location of district boundary lines, the Board of Adjustments and Appeals shall be the final authority as to location.



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- Contrary to the CEO’s 10/19/22 statement to the Doughtys that “We can’t single out one property owner. This enforcement would need to be town wide,” §601.1 clearly states that “it shall be the duty of the Code Enforcement Officer **to enforce the provisions of this Ordinance**. The Selectmen and Town Administrator shall assist the Code Enforcement Officer by reporting to him any new construction or use of land, and apparent violations of this Ordinance.”
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- Other than the appeal currently before the board, there is nothing else in the file for the Fowler lot.
- There is no record of the statement by the CEO to the Doughtys that “[t]here has [sic] been complaints and there has [sic] been letters and phone calls” about the property made since at least 7/30/21.
- There is no record of the Notice of Violation said to be pending as of 7/30/21.
- There is no record of a “Consent Agreement” between Fowler and the TOCI.
- There is no record of the “list of action items” given to Jim Fowler to complete.
- There is no record of any meeting between the CEO and Jim Fowler.
- There is no record of any conversations between the applicants and the CEO or between the CEO and the “town legal.”
- There is no record of the CEO’s “sharing his findings” with the Selectboard.
- In the IR district, running a business is, with few exceptions, not a permitted use (§204.1A).



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A. Is accessory to a residential use; and B. Is clearly incidental and secondary to the residential use of the dwelling unit; and C. Does not change the character of the dwelling.
- The Zoning Ordinance contains no definition of a “Contractor Storage Yard,” nor any ordinance related to a contractor storage yard.
- **AQUIFER RECHARGE AREA**
- Both the Doughty property and the Fowler property are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).
- According to CHAPTER 3 PROTECTION AND IMPROVEMENT OF WATERS SUBCHAPTER 1 ENVIRONMENTAL PROTECTION BOARD ARTICLE 1 ORGANIZATION AND GENERAL PROVISIONS M.R.S.A. §301.1-C, “aquifer recharge area” means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers. [PL 1979, c. 472, §8 (NEW)].
- Aquifer protection is covered in Zoning Ordinance §300.
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- The Board found the application to be complete on November 17, 2022.

Statement of the Facts Found and Conclusions

In the absence of the CEO himself and the absence of any written, official record of the history of this complaint, we must rely solely on the presentation by the applicants to confirm or deny this appeal

1. Tad Runge moved to vote that the applicants have met the burden of proof in this appeal, and Cheryl Stevens seconded the motion (vote 4:0).
2. Tad Runge moved to vote that the Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance, and Cheryl Stevens seconded the motion (vote 4:0).
3. Tad Runge moved to vote that the owner of lot I-06-018-002 is operating an unpermitted business in the Island Residential Zone, and Charles Hall seconded the motion (vote 4:0).

Decision

Based on the findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted (4:0) as follows:

The applicants have met the burden of proof in this appeal (4 : 0).

The Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance (4:0).

The owner of lot I-06-018-002 is operating an unpermitted business in the Island Residential Zone (4 :0).

The Board of Adjustment and Appeals has voted to grant the appeal (4:0).

CONCLUSION:

The Board reviewed the evidence and found that there was substantial evidence in the record supporting the granting of the Administrative Appeal and based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustments and Appeals voted (4:0) to APPROVE the Administrative Appeal.

Date Approved: November 21, 2022
Town of Chebeague Island Board of Adjustment and Appeals



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Pursuant to Ch. 17 Art. II, § 603.4.D of the Zoning Ordinance, this decision can be appealed
in the Superior Court within forty (45) days.

Respectfully submitted,

A.E. Runge
Secretary of the Board



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Findings of Fact & Conclusion of Law

Date: November 17, 2022
Application Type: Administrative Appeal
Applicants' Names: Courtney Doughty and Justin Doughty
In re property located at: Tax Map I-06, Lot 018-002
Zoning District: Island Residential (IR)



Dear Courtney and Justin:

This is to inform you that the Board of Adjustment and Appeals has acted on your application for an administrative appeal as follows:

Project Description:

Applicants Justin and Courtney Doughty filed an administrative appeal of the Code Enforcement Officer's failure to enforce the Zoning Ordinance

Prehearing Findings of Fact:

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HISTORY

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- They have been corresponding with the town and the Code Enforcement Officer since at least 7/30/21.
- The lot in question was granted to James M. Fowler, Jr., for \$1 by quitclaim deed from Roger and Susanna Haskell on 7/30/19 (Cumberland County Registry of Deeds Bk 35849; Pg 294).
- The CEO states in an email dated 9/12/22 to the applicants that "this started happening before I became code officer on the Island."
- James Butler has been the Code Enforcement Officer for TOCI since at least 5/2/19.
- Jim Fowler is the owner of Lot 18 but does not reside there, nor is there any sort of residential structure on the property.
- Both properties are in the Island Residential (IR) district (Zoning Ordinance Appendix A).



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- Both properties are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).
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- **AQUIFER RECHARGE AREA**



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- Both the Doughty property and the Fowler property are in the Aquifer Recharge Area (Zoning Ordinance Appendix C).
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- The Board found the application to be complete on November 17, 2022.

Statement of the Facts Found and Conclusions

In the absence of the CEO himself and the absence of any written, official record of the history of this complaint, we must rely solely on the presentation by the applicants to confirm or deny this appeal

1. Tad Runge moved to vote that the applicants have met the burden of proof in this appeal, and Cheryl Stevens seconded the motion (vote 4:0).
2. Tad Runge moved to vote that the Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance, and Cheryl Stevens seconded the motion (vote 4:0).
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Decision

Based on the findings of fact and conclusions, the Town of Chebeague Island Board of Adjustment and Appeals voted (4:0) as follows:

The applicants have met the burden of proof in this appeal (4 : 0).

The Code Enforcement Officer failed to act in a manner concordant with the TOCI's Zoning Ordinance (4:0).



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The owner of lot I-06-018-002 is operating an unpermitted business in the Island Residential Zone (4 :0).

The Board of Adjustment and Appeals has voted to grant the appeal (4:0).

CONCLUSION:

The Board reviewed the evidence and found that there was substantial evidence in the record supporting the granting of the Administrative Appeal and based on the above findings of fact and conclusions, the Town of Chebeague Island Board of Adjustments and Appeals voted (4:0) to APPROVE your Administrative Appeal.

Date Approved: November 3, 2022

Town of Chebeague Island Board of Adjustment and Appeals

Pursuant to Ch. 17 Art. II, § 603.4.D of the Zoning Ordinance, this decision can be appealed in the Superior Court within forty (45) days.

Respectfully submitted,

A.E. Runge
Secretary of the Board

