

RECEIVED
10/19/22
20 VW

Application for Administrative Appeal to Board of Appeals

- 1. Name of Appellant JUSTIN + COURTNEY DOUGHTY
- 2. Mailing Address 321 NORTH RD. CHEBEAGUE ISLAND
- 3. Telephone 207-450-1802
- 4. Name of Owner of Property Which is Subject of Appeal

JAMES FOWLER

5. Please describe in detail the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the board of appeals to take in this matter. If additional space is needed, please continue on a separate sheet of paper and attach it to this application.

Please see attached: "Appeal"

I certify that the information contained in this application is true to the best of my knowledge and belief.

Date 10/18/22


Signature of Appellant



1. $\frac{1}{x^2} = x^{-2}$
 $\frac{d}{dx} x^{-2} = -2x^{-3} = -\frac{2}{x^3}$
 $\frac{d}{dx} \frac{1}{x^2} = -\frac{2}{x^3}$

2. $\frac{d}{dx} \frac{1}{x^3} = -\frac{3}{x^4}$

3. $\frac{d}{dx} \frac{1}{x^4} = -\frac{4}{x^5}$



$\frac{d}{dx} \frac{1}{x^5} = -\frac{5}{x^6}$

Notice of Administrative Appeal Decision

To: _____ Date: _____

Dear _____:

This is to inform you that the Board of Appeals acted on your application for an administrative appeal at its meeting on _____ and made the following findings and conclusions:

Findings of Fact

1. The owner of the property is _____.
2. The property is located at _____.

It is in the zoning district and is identified as Assessor's Map _____,
Lot _____. It contains _____ square feet.
3. The applicant is _____
who has demonstrated a legal interest in the property by providing a copy of a _____
_____ (deed, option, purchase agreement, etc.).
4. The applicant proposes to construct _____ on the
subject property/conduct the following use on the property _____.
5. A completed application was submitted on _____.
6. A Public Hearing was held on _____.
7. The relevant sections of the ordinance are _____

_____.
8. Other relevant facts are: _____

_____.

Justin and Courtney Doughty APPEAL

October 19, 2022

We are appealing the CEO's decision and proposed action regarding our complaints since July 2021. His last email was 9/20/22. See below:

Hi Courtney,

Sorry you don't agree with my path forward. I understand your frustration but unfortunately your interpretation of the zoning ordinance is also an opinion.

My opinions are backed by training, experience, and certifications. My actions represent what I have been trained to do and that is to enforce and interpret ordinances and apply them uniformly. I know you don't agree with it as your email is very apparent of that but I am also trying to keep the town out of court for selective enforcement and being bias against a single property owner.

If the town wishes to enforce the ordinances as you see fit then we would need to budget for that type of enforcement and also that kind of a legal budget.

We can't single out one property owner. This enforcement would need to be town wide.

Jim

In the above email, Jim Butler states that he will not enforce the Zoning Ordinance due to the potential for biases and town budgetary considerations for enforcement. We have outlined the dates of correspondence on this zoning complaint and attached all emails. We are asking for the current Zoning Ordinance be enforced by the town, and not allow businesses to operate freely in residential zones.

Our main concerns with his decision are in the following areas:

- We strongly disagree with a "Consent Agreement" involving Jim Fowler and the town.
- We experience 5-7 days per week of disruptive activity within 150 feet of our home- including endless chain sawing, operation of industrial equipment, wood processing, vehicle and equipment maintenance, constant in/out traffic
- The sole use of this property at the present time is Business related in a residential zone

- We expressed concerns about the aquifer and our nearby well for drinking water. We were told that the property was not “on a water aquifer.” The property location is clearly within the “Aquifer Recharge Area” in the Zoning Ordinance.
- We do not believe they are “in compliance” with Maine State Junkyard Statute
- Our Zoning Ordinance has no definition or use related to “Contractor Storage Yard” as CEO mentions

Justin and Courtney Doughty

Dates of Communication

7/30/21 - We issued a formal complaint outlining all code violations we deemed fit at the time.

7/30/21 - CEO responded stating there have been *multiple* complaints via phone and letters on this property and operation. A notice of violation would be going out the following week

8/25/21 - We requested an update since nothing had changed at the site

9/2/21 - COE responded he had walked the site with a selectman and the site was more organized and COE recommended we reach out to the planning board as this is a grey area but you had a list of action items you gave to Fowler to complete.

9/2/21 - We followed up with the planning board and we attended a selectmen meeting - no amendments were made

11/11/21 - We followed up b/c there were still violations under the CURRENT ordinance

11/11/21 - COE responded you are working through town legal and once updated you'll send us information

Fast forward to 8.4.22 - there have been no changes, more operations have been added, and there was no follow up from 11/11/21 correspondence.

j_doughty01@hotmail.com

From: Jim Butler <codeoffice@townofchebeagueisland.org>
Sent: Tuesday, September 20, 2022 6:16 PM
To: Courtney Doughty
Cc: townadmin@townofchebeagueisland.org; j_doughty01@hotmail.com; ripple963@gmail.com; Jen Belesca; markdyer@chebeague.net; cawhitemaine@gwi.net; Bo.chebeague1@outlook.com; occams81@gmail.com
Subject: Re: Fowler Complaint

Hi Courtney,

Sorry you don't agree with my path forward. I understand your frustration but unfortunately your interpretation of the zoning ordinance is also an opinion.

My opinions are backed by training, experience, and certifications. My actions represent what I have been trained to do and that is to enforce and interpret ordinances and apply them uniformly. I know you don't agree with it as your email is very apparent of that but I am also trying to keep the town out of court for selective enforcement and being bias against a single property owner.

If the town wishes to enforce the ordinances as you see fit then we would need to budget for that type of enforcement and also that kind of a legal budget.

We can't single out one property owner. This enforcement would need to be town wide.

Jim

On Sep 20, 2022 5:10 PM, Courtney Doughty <cdoughty@msad51.org> wrote:

Dear Jim and Vika,

Thank you for your recent response. We have cc'd the selectmen and Chair of the Planning Board. We are extremely disappointed and frustrated by this process. We have attached a PDF with the dates of communications and the action steps the CEO stated were taking place over the past year. Our initial complaint was made on July 30, 2021, so we understand that specifics of the initial complaint might have changed.

However, to address items in your email:

1. What Fowler is conducting *"falls into a grey area within our Town Ordinances. A lot of towns have a definition for this type of activity and it's referred to as a "Contractor Storage Yard."*

There is no grey area. He is in violation of operating a non-resident business on a plot of land that is **residentially zoned**.

2. Your statement, *"In the future it would make sense for the planning board to make some amendments to the zoning ordinance and to include that definition."*

This implies, to any resident of Chebeague, that the planning board can make amendments to allow for exceptions as they deem fit. A change can be made if the ordinance "doesn't make sense" to those in support of the violation. In this case, Fowler's operation is simply allowed, for whatever reason, even though it is currently in violation.

Furthermore, this response gives the impression that if a home is built on a nonconforming lot, supporters (which may even include town officials) could change the ordinance to fit the land owner's needs.

The "contractor storage yard" amendment you mentioned was an amendment that went through a **public hearing** in Old Orchard Beach. It is not a common ordinance, and it would be extremely sad if this town, under the recommendation of the current Planning Board went in this direction.

Simply stated, if there isn't a contractor zone in the **current** ordinance, then he is in violation right now. The CEO's job is not to make suggestions for future amendments. His/her job is to follow our current ordinance. Again, there is no grey area.

3. You mentioned that *"the Fowler location is not the only location on the island that is doing similar activities."*

If there is a complaint, the CEO's job is to follow up. We are not asking the CEO to seek out every code violation on this island, especially if no complaint has been made. However, we'd hope the town is following the protocol if a complaint of a violation is made. There have been multiple complaints about this operation and promised steps that would be followed. In the end, nothing has been done.

Specs Eaton was shut down very promptly after a complaint because he was breaking a zoning ordinance, which was a MUCH smaller infraction than what is currently taking place next to us.

4. "Draft a Consent Agreement between the Town and Jim Fowler to include operating conditions that include: Hours of Operation, Screening & Buffering, Future plan on site, which will push the project to have Full Planning Board review and approval."

These contractual agreements under **our** zoning ordinance are all for a business. Again, this is a **residential zone**. As abutters, the only "suggestion" we have is to follow the zoning ordinance.

There are ordinances, zoning laws, planning boards, and select boards for a reason. Residents rely on their town government to enforce laws and ordinances. It's not acceptable to look the other way because it's inconvenient, make excuses, or suggest amendments to better fit personal opinion. When a complaint is made, it's the CEO's job (overseen by the town admin) to look into it and comply with the ordinances that are **currently in place**, not to wait it out until you can change the ordinance in someone else's favor.

If you followed the current ordinances, Fowler's operation would have been shut down years ago. Instead, after numerous complaints, nothing has been done. We will be taking further steps to follow up with this issue.

Sincerely,

Courtney and Justin Doughty

On Mon, Sep 12, 2022 at 10:41 AM <townadmin@townofchebeagueisland.org> wrote:

Jim,

I have also cc'd Courtney on this so she sees the email as well. I encourage both of you to provide suggestions that you would like to see in the consent agreement and share with Jim.



Viktoria G. Wood | Town Administrator

Town of Chebeague Island

192 North Road

Chebeague Island | Maine | 04017

P: 207-846-3148

E: townadmin@townofchebeagueisland.org

www.townofchebeagueisland.org

From: Jim Butler <codeoffice@townofchebeagueisland.org>

Sent: Monday, September 12, 2022 10:25 AM

To: j_doughty01@hotmail.com

Cc: townadmin@townofchebeagueisland.org

Subject: Fowler Complaint

Good Morning,

Been reviewing this and had a meeting with Vika a few weeks ago to figure out a path forward on this issue. I am going to try to answer all your questions and also explain our plan to hopefully come to a reasonable resolution for all parties. The underlying issue as I have stated before is the operation that Fowler is conducting falls into a grey area within our Town Ordinances. A lot of towns have a definition for this type of activity and it's referred to as a "Contractor Storage Yard". In the future it 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 type of activity. The Fowler location is not the only location on the island that is doing similar activities. The biggest difference with the Fowlers is the location and visibility and how it is not kept organized and not operating under best practices.

How the Town intends to move forward:

Meeting with Jim Fowler to discuss the operation and the continued complaints.

Discuss the need to go in front of Planning Board if he is looking to increase size or scope of the operation.

Request a drawing showing a site plan for what he is currently doing on site.

Draft a Consent Agreement between the Town and Jim Fowler to include operating conditions that include; Hours of Operation, Screening & Buffering, Future plan on site which will push the project to have Full Planning Board review and approval.

Other Items that will ensure what he is doing on site does not have an adverse affect on the Town/Neighbors.

All the items that you listed are items that are typically discussed and required when a full site plan review takes place via the Town Planning Board. This did not take place and he started operating. This started happening before I became code officer on the Island. I believe they are now in compliance with State Junkyard statue. I don't see where they are on a water aquifer. The temporary structure is literally a tarp wrapped around trees that still have roots in the ground. Also I believe the camper is gone. They do not have a septic on site but not required.

Unfortunately this is not a simple issue and I cant just blanketly issue a NOV for what he is doing. In my experience if we did we would not get anything resolved and we would end up in court. The courts look for Towns to work with property owners on items such as this. We also need to be sure we are being fair and consistent town-wide. I believe the consent agreement route

is the best path forward. I am interested in hearing some items you as direct abutters would like to see in the consent agreement. I cant promise anything but it would be helpful to hear what would make life better for you.

Please send over some items when you get a chance as I plan to meet with Jim Fowler very soon to discuss.

Thanks and appreciate your patience.

Jim Butler

Code Enforcement Officer

Town of Chebeague Island

--
Courtney Doughty *she/her/hers*
RTI Coordinator/Learning Center Teacher
Greely High School

j_doughty01@hotmail.com

From: Jim Butler <codeoffice@townofchebeagueisland.org>
Sent: Tuesday, August 16, 2022 2:59 PM
To: Justin Doughty
Cc: townadmin@townofchebeagueisland.org
Subject: RE: Zoning Ordinance Complaint

Hello,

Appologies for delay In response. Been in high demand.

I'm meeting with Town Administrator next week on this topic.

Will have more of an update for you then.

Thanks

Jim

On Aug 4, 2022 11:10 AM, Justin Doughty <j_doughty01@hotmail.com> wrote:

James,

Do you have an update?

Best,

Justin and Courtney Doughty

From: codeoffice <codeoffice@townofchebeagueisland.org>
Sent: Thursday, November 11, 2021 3:31 PM
To: Justin Doughty <j_doughty01@hotmail.com>
Cc: Donna Damon <publicservantone@gmail.com>; Marjorie Stratton <townadmin@townofchebeagueisland.org>; jhcorson@outlook.com; jbelesca@chebeague.net; Bo.chebeague1@outlook.com; Mark Dyer <markdyer@chebeague.net>; Bob Earnest <ripple963@gmail.com>; Carol White <cawhitemaine@zwi.net>; Courtney Breslin <courtney.breslin@gmail.com>
Subject: RE: Zoning Ordinance Complaint

Hello,

I am working through Town legal on this matter. Thank you for sending a note and updated photo.

Once I have an update I will send you an email. The selectboard recently asked for an update as well via the Town Administrator. They will also be advised once action is being taken.

Thanks and will be in touch soon.

James D. Butler Jr.

Code Enforcement Officer

Town of Chebeague Island

207-357-2551

----- Original message -----

From: Justin Doughty <j_doughty01@hotmail.com>

Date: 11/11/21 3:22 PM (GMT-05:00)

To: CodeOffice@townofchebeagueisland.org

Cc: Donna Damon <publicservantone@gmail.com>, Marjorie Stratton <townadmin@townofchebeagueisland.org>, jhcorson@outlook.com, jbelesca@chebeague.net, Bo.chebeague1@outlook.com, Mark Dyer <markdyer@chebeague.net>, Bob Earnest <ripple963@gmail.com>, Carol White <cawhitemaine@zwi.net>, Courtney Breslin <courtney.breslin@gmail.com>

Subject: RE: Zoning Ordinance Complaint

James,

Do you have any updates regarding our complaint? We waited a long time to make this complaint, and feel we deserve further explanation at the very least.

As you recommended, we have attended meetings and spoken with members of the Planning Board and Select Board looking for insight. To my knowledge, the zoning ordinance has not changed and the violations we outlined still exist. I have had the unfortunate pleasure of being laid up for several weeks at home. The daily activities during that time don't seem to be "residential" nor "grey." I am also not aware of the "many other properties" that fall into this "category." And even if there were others, it is my understanding that the Code Officer is to act only if/when a complaint is made. Thank you in advance.

Regards,

Justin and Courtney Doughty

Attached photo taken this morning, 11/11/21.

From: Courtney Breslin <courtney.breslin@gmail.com>

Sent: Wednesday, September 22, 2021 5:25 PM

To: CodeOffice@townofchebeagueisland.org

Cc: Donna Damon <publicservantone@gmail.com>; Marjorie Stratton <townadmin@townofchebeagueisland.org>;

jhcorson@outlook.com; jbelesca@chebeague.net; Bo.chebeague1@outlook.com; Mark Dyer

<markdyer@chebeague.net>; Justin Doughty <j_doughty01@hotmail.com>; Bob Earnest <ripple963@gmail.com>;

Carol White <cawhitemaine@gwi.net>

Subject: Re: Zoning Ordinance Complaint

Hello,

Sorry we haven't responded. In part, there's uncertainty regarding the most appropriate response in light of the continued violations. We are disappointed that all the violations of ordinances outlined were not specifically addressed. We plan to listen in on tonight's workshop and hope it can shed some light on these issues.

I have cc'd Bob on this email to forward to the planning board as background of our complaint, since this seems to have been one of the triggers for this workshop.

Regards, Courtney and Justin

Sent from my iPhone

On Sep 2, 2021, at 6:06 PM, CodeOffice@townofchebeagueisland.org wrote:

Hello Justin & Courtney,

Sorry for the delay in response. We did make some progress with the property in which you filled the complaint on let me update you on that.

I called the owner to discuss the complaint and advised I wanted to come walk the site. So the following week we walked the site and it was cleaned up substantially on the day of the site walk. There was still a few items but was neatly organized and a plan in place to get the rest of the items off the site asap. This is substantial progress as over the few years I have bene on the island nothing has ever moved in this direction of improvement.

We did discuss the use of the property and it is a bit of a grey area in our ordinances and it we were to come down on him we would also have many other properties that would fall into the same category. I have involved the Town Selectmen to advise on this grey area and the impact it would have on many similar uses if we utilized the strict definitions within our ordinances. This is on the radar for the Planning Board to look into and there may be some ordinance changes coming along soon.

I do agree that the property was becoming a bit of a blight but I think we have moved into a better situation.

I would encourage you to attend Planning Board meetings when they discuss this matter so you can provide feedback as an abutter and how it may impact you.

If there are some specific items you would like me to address in addition to what I have already done please feel free and I can work with the owner on this.

Thanks and if you have any questions please feel free to reach out.

Jim

From: Justin Doughty <j_doughty01@hotmail.com>
Sent: Wednesday, August 25, 2021 8:51 AM
To: Courtney Breslin <courtney.breslin@gmail.com>; codeoffice <codeoffice@townofchebeagueisland.org>
Cc: Donna Damon <publicservantone@gmail.com>; Marjorie Stratton <townadmin@townofchebeagueisland.org>; jhcorson@outlook.com; jbelesca@chebeague.net; Bo.chebeague1@outlook.com; Mark Dyer <markdyer@chebeague.net>
Subject: RE: Zoning Ordinance Complaint

James,

We are following up on your email a few weeks ago. We were wondering if a Violation Notice was written, or if you have any updates to report. Thank you in advance.

Regards,

Justin and Courtney

From: Courtney Breslin <courtney.breslin@gmail.com>
Sent: Friday, July 30, 2021 1:44 PM

To: codeoffice <codeoffice@townofchebeagueisland.org>

Cc: Donna Damon <publicservantone@gmail.com>; Marjorie Stratton

<townadmin@townofchebeagueisland.org>; Justin Doughty <j_doughty01@hotmail.com>

Subject: Re: Zoning Ordinance Complaint

Thank you for your prompt response and we appreciate you taking next steps.

Best wishes, Courtney and Justin

On Fri, Jul 30, 2021 at 11:30 AM codeoffice <codeoffice@townofchebeagueisland.org> wrote:

Hello,

There has been complaints and there has been letters and phone calls. We have hoped for voluntary compliance but it apparent that the owner is not following that guidance.

I will draft an official Notice of Violation next week and get to the owner.

Thank you for sending over the complaint.

James D. Butler Jr.

Code Enforcement Officer

Town of Chebeague Island

207-357-2551

----- Original message -----

From: Donna Damon <publicservantone@gmail.com>

Date: 7/30/21 10:15 AM (GMT-05:00)

To: Courtney Breslin <courtney.breslin@gmail.com>

Cc: codeoffice <CodeOffice@townofchebeagueisland.org>, Marjorie Stratton <townadmin@townofchebeagueisland.org>, Justin Doughty <j_doughty01@hotmail.com>

Subject: Re: Zoning Ordinance Complaint

Thanks for bringing this to our attention and informing the Code Enforcement officer. It is his job to follow up on your concerns.

I assume he will share his findings with us.

Donna

On Fri, Jul 30, 2021 at 9:59 AM Courtney Breslin <courtney.breslin@gmail.com> wrote:

To Whom It May Concern:

Please accept this formal complaint in writing regarding the property on North Road owned by Jim Fowler that directly abuts our property.

Zoned residential, over the last three years this space has been used solely for business purposes and continues to expand for that purpose. We understand there have been other complaints regarding this property with no response. It's no longer acceptable as the violations are blatant and continue to happen.

I (Courtney) will be coming into the office to discuss the matter in person, but we wanted this complaint on file. In Section 601 of our Zoning Ordinance it is the CEO's job to enforce the provisions of the zoning ordinance. The selectmen and town administrator shall assist the Code Enforcement Officer by reporting to him any apparent violations. Hence, why we have included all parties on this formal complaint. Below are the violations that seem blatant from the road, but probably do not capture everything:

1. The land is being used for business operations in a *residential zone*. There is no residential occupancy and even if there was, he would need approval to be operating a business. This is an obvious business, as these people do not live on Chebeague and come to the island every day to operate their business off of Jim Fowler's property. Of course, the eyesore is upsetting and the noise level increases daily, but what is most upsetting is the number of business vehicles and materials that are strewn about and not properly stored. Note: If this was a business zone there would be multiple violations as well.

2. 206.2: Section E. Changes of use - was there a site review? There is no evidence that this occurred.

3. If there was a review there are many violations under 206.8 but the one I am most concerned about is :

T. Storage of Materials - Visual buffer, **safety hazard to children physical screening**

W. Does this meet the fire protection ordinance? This feels like a ticking time bomb with just one match.

4. Aquifer Protection: 303.2 - E. Storage of petroleum or other refined petroleum products w/ the exception of petroleum for *household purposes*. This would require a house, so everything on his property should have a proper storage. There have been times we have smelled the gas at our house from a leaking truck. Our well is 100 yards below his property.

5. 404.2: Setbacks

6. 414: Home-based operations would be in violation if there was even a home with the owner residing.

7. 415: Junkyard: There are 5 unregistered vehicles and 3 are non-serviceable and have not moved in the past year (2 haven't moved in 3 years).

8. Section 429: Temporary structures, may only be permitted during building period and maximum of 6 months (including mobile units). Regarding the allowed SIX months period; a temporary structure has been there for two+ years and now we have a camper. Why? Perhaps they're looking for overnight lodging versus continuing their daily commuting.

9. As of yesterday: Section 432: Violation on F unless you have a sewage disposal plan approved by the plumbing inspector.

Thank you and we look forward to hearing from you about next steps.

Sincerely, Courtney and Justin Doughty

