

CITY OF BETHEL, ALASKA BOARD OF ADJUSTMENT

Appeal of Planning Commission Hearing NO. 2020-01

DECISION

This service as the written decision of the Board of Adjustment for the City of Bethel (BOA), for the appeal reference above (the "Appeal"). This Appeal is dated December 18, 2019, initiated by Dan and Dawn Hackney and relates to 175 Alex Hatley, Bethel, Alaska. The Appeal relates to the Decision and Order of the City of Bethel Planning Commission, dated November 18, 2019. The BOA held a hearing on February 4, 2020 (the "Hearing"). Based upon the evidence presented on the record, the members of the BOA voted 5 to 0 to deny the appeal and confirm and adopt the findings and conclusions the Planning Commission issued November 18, 2019. The Board's decision is effective February 6, 2020.

NOTICE OF FINAL DECISION AND RIGHT TO APPEAL

The City of Bethel Board of Adjustment adopts this decision as final. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Part 600 of the Alaska Rules of Appellate Procedure within 30 days after the date of distribution of this decision.

DATED this 6 day of February, 2020.

BACKGROUND

On November 14, 2019, pursuant to Bethel Municipal Code ("BMC") Section 18.72.010, a hearing was held before the City of Bethel Planning Commission ("the Commission") on Dan and Dawn Hackney's ("the Hackneys" or "Appellants") appeal of the City of Bethel planning director's ("planning director," "planning department" or "land use administrator") August 30, 2019 Notice to Correct Violations. After considering all of the evidence submitted by the parties as required by BMC 18.72.010(D), the Commission confirmed the findings and conclusions of the planning department pursuant to BMC 18.72.010(E) by a unanimous vote of 7-0.

FINDINGS OF FACT

- 1) On July 20, 2018, Dan and Dawn Hackney, owners of 175 Alex Hatley, Block 1, Lot 11, Blueberry Field Subdivision, Bethel, Alaska, submitted a Residential Site Plan Permit

application to the Planning Department for a 20-foot X 42-foot garage/storage/shop and mother-in-law unit.

- 2) The planning staff assistant testified at the hearing that she and the former planning director, Betsy Jumper, told Mr. Hackney that the mother-in-law unit or two unattached dwelling units were not allowed on one property in the Residential Zone. The application was approved on July 24, 2018 and a Site Plan Permit was issued to only allow for the construction of a 20-foot x 42-foot shop/garage/storage shed.
- 3) On January 9, 2019, Mr. Hackney submitted a request to the Planning Department to amend the approved July 24 Site Plan Permit by increasing the structure dimensions to 24-feet x 64-feet and referring to the structure as an attached garage. The Planning Department issued an addendum to the permit, approving the attached garage with the increased dimensions to 24-feet X 64-feet.
- 4) On February 19 2019, Mr. Hackney dropped off a 2018 As-built drawing at the planning department. The As-built drawing showed the existing Single Family house connected by a planned, hand-drawn deck to the hand-drawn new structure.
- 5) On June 7, 2019, the City of Bethel Planning Department, received an official complaint from four neighborhood residents alleging violations of the City of Bethel Site Plan Permit 18-34, for Daniel and Dawn Hackney of 175 Alex Hately, lot 11, Blueberry Field Subdivision phase plat 84-13. The Complaint included allegations the Hackneys had (1) failed to provide an accurate description of their building plans in their site plan application and (2) built apartments or a hotel in a residential area, with a residence already on the property.
- 6) Ted Meyer became the planning director in August 2018. Pursuant to BMC 15.12.090, Mr. Meyer, investigated the complaint and found it had merit. Part of the investigation included accepting an invitation from the Hackneys to tour the new building on their property. The second floor included four finished and furnished hotel-style rooms, each with enclosed bathroom, and a kitchen for the guests downstairs. A van full of guests was arriving as planning staff were departing.
- 7) On August 19, 2019, the planning department staff took photos of the Hackney property. The three photos and an additional Google Earth aerial photo show:
 - a. Existing Single Family house side by side with the new structure, with a connecting deck in between.
 - b. Existing Single Family house with the new structure in background.
 - c. A rear view of the new structure.
- 8) On August 30, 2019, the City Planning Department issued the Hackneys a Notice to Correct Violations stating that they had violated the Bethel Municipal Code since they had not received approval to build a second floor with a bed and breakfast (B & B) or other lodging units. The City determined that the Hackneys had committed the following violations:

- a. Non-compliance with Authorized Improvements, in violation of BMC 15.12.070; and
 - b. Non-Compliance with BMC Residential Zoning Code, in violation of BMC 18.32.020 and 18.32.030.
- 9) The City planning department properly determined that the Hackneys violated the Bethel Municipal Code. The evidence presented at the hearing overwhelmingly established that the Hackneys had constructed a B & B or other lodging unit on their property, in violation of their site permit and in violation of the Bethel Municipal Code restrictions on Residential Zones.
- 10) The City gave the Hackneys 30 days to correct the violations and invited them to visit the planning department to discuss the construction project and permissible uses of the property under the Bethel Code. The City further notified the Hackneys of their right to appeal the Planning Department's determination to the City Planning Commission. It explained that "the written appeal must be submitted to the Planning Department and must specify the grounds for appeal and specify the actions and findings of the department that are being disputed."
- 11) On September 9, 2019, the Hackneys appealed the City's August 30 Notice to correct violations. They stated their grounds for appeal were:
 - a. All construction and use of 175 Katie Hatley were authorized by the former Planning Director Betsy Jumper.
 - b. All actions and findings of the planning department are disputed.
- 12) On September 13, 2019, the parties and their respective attorneys met to discuss the August 30, 2019 Notice to Correct Violations. Based upon that meeting, the parties agreed to hold in abeyance the Hackney's September 9, 2019 appeal while a corrective action plan was formulated between the parties.
- 13) On September 26, 2019 the planning department issued the Corrective Action Plan to the Hackneys to bring the structure into code compliance. The plan included deadlines for submission by Mr. Hackney as follows:
 - a. A detailed and scaled floor plan drawing of the constructed floor levels 1 and 2 of the new building¹
 - b. A new Site Plan Permit application with a detailed and scaled site plan drawing with a type of use that is compliant with BMC 18.32.020, 18.32.030, and 15.12.
 - c. A plan for the conversion of the second floor of the structure from transient lodging units to an approved BMC compliant use.
- 14) On October 10, 2019 the Hackneys rejected the Corrective Action Plan and requested their appeal of the August 30 Notice to correct violations "move forward."

- 15) On October 28, 2019, the Bethel Planning Department sent a notification to the Hackneys that their letter of appeal did not provide an adequate explanation for the appeal, as required in BMC 18.72.010A.
- 16) On October 28, 2019 the Hackneys notified the planning department that they were appealing the planning department's October 28 letter regarding the inadequate appeal.
- 17) On October 29, 2019, the planning department notified the Hackneys of the November 14, 2019 Planning Commission hearing for the Hackney appeal.
- 18) On November 14, 2019, the Planning Commission held a public hearing of the Hackneys' appeal from the Planning Department's Notice to Correct. As required by BMC 18.72.010D, the planning department submitted a summary of the application process and statement of findings to support its actions in issuing a Notice to Correct Violations to the Hackneys.
- 19) The Commission heard the sworn testimony and arguments of both parties. It also heard the sworn testimony of members of the public. It considered the permit application, correspondence, materials received from the parties, the letter of appeal, the planning department summary of the application and statement of findings supporting the action of the land use administrator, the verbal testimony taken under oath, and arguments of the parties to the appeal. After considering all of the evidence, the Commission denied the appeal and confirmed the planning director's findings, ordering the Hackneys to come into compliance with the Bethel Municipal Code.

CONCLUSIONS OF LAW

- 1) The Hackney property is located in the Residential ("R") district. **BMC 18.32.010** states that it is the intent of the residential district to provide protection to residential areas from encroachment from nonresidential activities.
- 2) Pursuant to **BMC 18.32.020**, the following are permitted and principal uses and structures in the Residential District:
 - a. Trails and boardwalks;
 - b. Non-motorized public access areas to the Kuskokwim River or other areas that require public access;
 - c. Single-family dwelling units;
 - d. Duplex uses;
 - e. Greenbelts and land reserves;
 - f. Subsistence activities;
 - g. Any accessory use or use of structure associated with the principal use or structure on the lot;
 - h. The facilities of sewer, water and other utilities required to serve the lots in the district;
 - i. Home occupations, but not more than two (2) per dwelling unit;

- 3) **BMC 18.36.020(K)(31)** allows hotels, motels, hostels, bed and breakfasts, bunk houses, and boarding houses in the Bethel General Use District. Bethel residents therefore have the option to build bed and breakfasts in the Bethel General Use District. The Hackneys had the option of building their bed and breakfast in the General Use District but chose not to.
- 4) Pursuant to **BMC 18.32.020G (Residential Zoning District Permitted and Principal Use and Structures)**, any accessory use or structure associated with the principal use or structure on the lot are permitted in the Residential District. However, an accessory is defined in **BMC 16.12.030** as being customarily accessory and clearly subordinate and incidental to the principal use or structure on the lot. The Hackneys' additional 4-unit Bed & Breakfast or other lodging unit on the property is clearly not subordinate and incidental to the already existing Single Family dwelling unit, which is the principal use on the property. The structure at issue is consequently clearly not allowed by **BMC 18.32.020**.
- 5) The Hackneys state that their grounds for appeal are that all construction and use of the property were authorized by the former planning director Betsy Jumper. However, the initial site plan permit only gave the Hackneys permission to "construct a 20-foot x 42-foot shop/garage/storage shed" and the addendum to the permit only allowed for the construction of "a 24-foot x 64-foot garage." The city planning department never gave the Hackneys written consent to build the structure at issue.
- 6) The approved Site Plan Permit is a one-sheet document and is the only approval mechanism used by planning departments to convey a Notice to Proceed to the developer to begin construction. The purpose of posting the permit is to notify the public that the project plans comply with local standards for land use, zoning, and development. The Authorized Improvements listed on the permit sheet are the only improvements that can be made by the property owner. Neither the July 20, 2018 permit, nor the January 9, 2019 addendum, allowed the Hackneys to construct the second floor lodging units.
- 7) The Hackneys are in violation of BMC Section 15.12.070 (Modifications) since they failed to obtain the written consent of the land use administrator (planning director) when they modified the approved plan.
- 8) The Hackneys are also in violation of BMC 18.36.020 (Residential District) since B & B's and transient lodging are not permitted in the Residential Zone. (The Hackneys reside in the residential zone.)
- 9) There is no merit to the Hackneys' appeal and it should be dismissed. The planning director's August 30, 2019 decision which found that the Hackneys had violated the Bethel Municipal Code Sections 15.12.070 and 18.32.020 and required them to come into compliance with the Code should be affirmed.



 Board Chair, Mark Springer

2/6/2020

 Dated