

BRISTOL
ZONING BOARD OF ADJUSTMENT
June 26, 2018

APPROVED:
7/10/18 __jrl_____

AGENDA: CONTINUED 18APP01 APPEAL FROM ADMINISTRATIVE DECISION: DOWEY, FREEMAN, HUOT, & PINKNEY (abutters), Wulamat & Batten Roads, #103-032

ATTENDING: Richard LaFlamme (Vice Chairman), Lorraine Bohmiller, Larry Denton

ABSENT: Alan DeStefano (Chairman, recused), Ashley Dolloff (excused)

OTHER: Christina Goodwin (Land Use Manager), Attorney Whitley (rep. for the town), applicants and their attorney, public

The meeting opened at 6:03p.m.

MINUTES OF JUNE 5, 2018:

L. Bohmiller made a motion, second by L. Denton, to approve the minutes as read. The motion carried.

CONTINUED 18APP01 APPEAL FROM ADMINISTRATIVE DECISION: ATTORNEY W. SCOTT O'CONNELL FOR DOWEY, FREEMAN, HUOT, AND PINKNEY

Mr. LaFlamme asked the applicants if they wish to continue with just the 3 members attending and Atty. O'Connell stated that they are.

The meeting was then opened for public comment based on the findings of Ms. Goodwin's research. Attorney O'Connell stated that boat storage in the Lake District has needed a Special Exception since its inception in 2001. The Planning Board, in past years, may have applied this to just commercial properties but the Zoning Ordinance does not designate this. This Board must decide about the two buildings as to whether they are appropriate for Bristol and preserving the Lake. It is not the Planning Board's purview to determine Special Exception. The law is clear; if Turners uses the buildings for boat storage, they must come in for a Special Exception. The Lake is at risk. If this Board denies the appeal, this could then go to Superior Court. Atty. O'Connell thanked Ms. Goodwin for her research. He did not understand the years of each case. Ms. Goodwin explained that the first 2 numbers of each case are the years in which the activity was done.

Deborah Richards, Turner Cottages owner, also thanked Ms. Goodwin. She went on to say that the Engineer was the one who erroneously stated that the buildings were for boat storage. This was corrected by the owners in the 2nd meeting as they were intended as garages. She pointed out the cited case of Swiss View. This is also a condominium. Their garages were to store boats, cars, and equipment as is Turners. They did not have to do a Special Exception. West Shore Marine and Bristol Shores were mentioned. Ms. Goodwin explained that Bristol Shores is commercial as it is designated as a Campground. They did have to go for Special Exception.

APPEAL continued:

Mr. Denton asked about the 2017 Variance and Ms. Goodwin stated that this was for setbacks. Ms. Richards said that her conclusion is that there has been precedence. Turner Cottages is not a business and they do not intend to be rude. Mr. Denton asked her if Turners would agree to not store boats. Ms. Richards answered that other residents can store what they wish in their accessory buildings and the Turner Cottages residents wish to do the same. Mr. Denton stated that originally it came in as boat storage. Ms. Richards answered that this was the engineer's mistake.

Ms. Bohmiller asked about drainage. Larry Ellis, President of Turner Cottages Condo. Association, stated that they have spent a lot of money, for professionals brought in by the town, to address run-off. We have spent almost a year on this project.

Atty. O'Connell stated that these issues are hard but the true making of a point is that there will be boat storage. The ZBA cannot use prior mistakes to judge. This case was changed from boat storage so as to make it easier to get it through. The ZBA just needs to apply the law. Ms. Richards was offended by the insinuation that they tried to get around the issue. They have worked diligently with the town and also have concern for the Lake. They are looking for accessory buildings. Mr. Ellis added that, if you take the letter of the law, there are residential garages on King Arthur Lane, Castle Lane, and also another (evading him at the moment) which are used in the same way.

Attorney O'Connell stated that the Zoning Ordinance article 8.15 is proposing a facility. We cannot address others. Ms. Richards asked what is considered boat storage; outside/inside/etc. Mr. Denton stated that the ZBA did not write the Ordinance. Mr. Ellis pointed out that, in the research, all that required Special Exception were commercial properties. Mr. Denton explained that we have to judge by what is written now. Mr. LaFlamme agreed that we have to judge by the Zoning Ordinance. Ms. Goodwin stated that the Planning Board determines what is referred to the ZBA and Ms. Richards added that, in their case, they determined that we did not need Special Exception. Ms. Goodwin stated that we are here to determine if the Planning Bd. made the right decision. Ms. Richards asked why they are the ones to be brought in on this. Attorney Whitley explained that, when the Planning Board (or other Boards) does an interpretation, other parties can come in to the ZBA on appeal. It may not be fair but is the process. Mr. LaFlamme added that the ZBA must determine the law of the Zoning Ordinance. The Zoning Ordinance would have to be changed.

At this time, Mr. LaFlamme closed the public session and asked a MOTION TO GO INTO NON-PUBLIC SESSION CITING RSA91-A:3, ii (L). Larry Denton – yes, Lorraine Bohmiller – yes, Richard LaFlamme – yes. Non-public began at 6:41pm and Ms. Goodwin took those minutes. The public was called back at 7:08pm. MOTION TO RETURN TO PUBLIC SESSION WAS MADE BY L. DENTON AND SECONDED BY L. BOHMILLER : Lorraine Bohmiller – yes, Larry Denton – yes, Richard LaFlamme – yes. L. Denton made a MOTION, second by L. Bohmiller, to SEAL THE NON-PUBLIC MINUTES. The motion CARRIED unanimously.

APPEAL continued:

At this time, Mr. Denton asked Ms. Goodwin to go over the Research Spreadsheet and Attorney O'Connell asked that the particular Board in each case be explained.

27 West Shore Road (Residence): ZBA Variance for an accessory building within a setback was approved. Land Use permit was given. Land Use permit given for a storage shed for boats and yard equipment meeting setbacks; no Special Exception required.

43 Swiss View Drive (Residence): ZBA Variance approved with conditions for a garage within a setback. Land Use permit given with height restriction of 20'. ZBA Special Exception denied for additional height to accommodate a boat and storage above.

1330 Lake St. (Swiss View Condo Residence): Planning Bd. waiver request for less than 400sf to add a 5th garage to a previously approved plan for 7 garages; approved with the condition that the abutters sign their approval. Land Use permit to build a 4 bay garage. Land Use permit given to add a bay on existing garages.

81 Wulamat Road (Commercial Campground): ZBA Special Exception to expand the campground to across the St. – denied. ZBA Special Exception to build maintenance storage building, guest parking, and boat storage across the street – approved with conditions: restricted deed that this is only for the campground residents, no recreational camping on the lot, garage to be used for maintenance equipment to maintain the site, no boat or motor vehicle repair on site, and suitable landscaping and screening. Planning Bd. Site Plan for Boat Storage and Guest Parking plus utility shed – approved. Land Use permit to construct approved garage with boat storage and guest parking.

838 Lake St. (Commercial; Village Commercial district): Planning Bd. Site Plan to build a full service boat dealership – approved with conditions: boats to be washed inside, restrict boat display to 4 outside from 5/1 to 10/15, and for a reduction of parking which was granted. ZBA Variance – approved with conditions for boat storage in the rear of the property (a 55' buffer zone next to the residence in the rear area, a planting buffer to screen view and noise from the storage area, and update Site Plan. Land Use Permit – approved to build the two buildings.

861 Lake St. (Commercial – Village Commercial district): Planning Bd. Site Plan to convert to 2 1-bedroom/studio apartments and 2 commercial units – approved with conditions (garage for personal use only, limit business hours, hand wire smoke detectors. Land Use permit approved with same conditions.

Ms. Goodwin added one more: a Planning Board PCC with Turners asking for outside boat storage and they were told that they would need Site Plan. It was noted that all of these were done after the 2001 restriction to Lake district boat storage by Special Exception.

Ellen Rawlings, President of Camelot Acres Assoc., questioned the additional case and Ms. Goodwin explained that this was done at a PCC (Preliminary Conceptual Consultation). Ms. Rawlings added that the Site Plan never happened.

APPEAL continued:

With no other comments, Mr. LaFlamme closed the public session,. Mr. Denton stated that this is hard as there is a lot of evidence and the question is whether it is clear. Is it commercial and residential. Ms. Bohmiller felt that the whole list for Special Exception in the Lake District (3.2F) refers to commercial uses. She feels that it is ambiguous. Mr. Denton added that, according to the research spreadsheet, Special Exception has not been required for Residential properties. Mr. LaFlamme stated that it is not well defined. Mr. Denton mentioned that, in the past, Special Exception has not been required for boat storage. Ms. Goodwin stated that we picked out whatever we could find since 2001. Mr. Denton felt that it has become a precedent.

Attorney Whitley explained to the Board that they have 3 options: to agree with the Planning Board, to reverse the Planning Boards decision, or tweak a conditional for the Turner people. He feels that the first 2 options are best in this case. The Board must decide if the Zoning Ordinance is ambiguous.

Mr. Denton felt that it is ambiguous as it does not specify commercial or residential. Mr. LaFlamme agreed and added that it should be clearer. Mr. Denton and Mr. LaFlamme stated that they feel that the definition is ambiguous and was never changed when the Special Exception was added. Ms. Bohmiller agreed with that and also feels that 3.2F is also ambiguous as it does not spell out commercial or residence. Mr. Denton added that, using this guideline, it does not feel that the Planning Board was wrong.

At this time, Atty. Whitley read the definition of Administrative gloss and said that the Board must determine if this case meets that. Mr. Denton felt that it applies in the first cases which included boat storage and were not commercial. Mr. LaFlamme agreed as did Ms. Bohmiller. Atty. Whitley asked if they had any clarification. Ms. Goodwin stated that the same definition has been in effect since 1991. At that time, boat storage was allowed. It changed in 2001 to Special Exception for the Lake District.

L. Denton MADE A MOTION, second by L. Bohmiller, TO APPROVE THE PLANNING BOARD DECISION, THEREBY DENYING THE APPEAL. The vote CARRIED UNANIMOUSLY and the Notice of Decision was signed. Mr. LaFlamme explained that there is a 30-day time slot in which a request for rehearing could be done. He then thanked everyone for coming in.

NEXT MEETING: The next ZBA meeting has been rescheduled to July 19, 2018 due to the holiday. We meet at 6:00pm and have 2 Special Exceptions (for height). Ms. Goodwin will not be able to attend as she will be on vacation.

With no other business, the meeting adjourned at 7:38pm.

Respectfully submitted.
Jan Laferriere,
Land Use Admin. Assistant

