

Kennebunkport Zoning Board of Appeals
32 North Street, Village Fire Station
April 24, 2017 @ 7:00 P.M.

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, April 24, 2017. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. Paul Cadigan (Chair), Wayne Fessenden, James Fitzgerald, April Dufoe, Gordon Ayer
Others Present: Werner Gilliam, Town Planner

1. Attendance

Mr. Cadigan asked the Board members to perform a roll call and confirmed there is a quorum for this meeting.

2. Approval of any minutes not previously approved.

Mr. Cadigan deferred approval of any minutes until the next meeting.

*3. **Sara Young** - The Applicant is seeking Residential Rental Accommodations approval for her existing single-family home. The property location is 93 Wildes District Road, Tax Map 21, Block 009, Lot 24 in the Village Residential East Zone.*

Mr. Cadigan introduced the Agenda item and asked the Applicant to give a brief presentation.

Ms. Sara Young addressed the board stating she has resided at 93 Wildes District Road for 15 years and is asking for approval to rent 1 bedroom/1 bathroom during the 8-week summer season. Ms. Young explained her property is unique in that there are 2 structures; the main house with 1 bedroom, 1 bathroom, 2 decks, kitchen with a screened in porch and a remodeled cow barn which she uses as a second bedroom.

Mr. Fitzgerald asked if there were kitchen facilities in the second building. Ms. Young replied no there is not. Mr. Fitzgerald commented the Applicant would be renting out the first structure with the kitchen and the Applicant will not have any kitchen facilities. Ms. Young agreed with Mr. Fitzgerald's statement.

Mr. Cadigan asked the Applicant if she would be using the kitchen facilities at all. Ms. Young replied she would like to give her guests the maximum amount of privacy possible and would only be using the kitchen when there are no guests.

Mr. Cadigan asked Mr. Gilliam how the Applicant's property is defined by the town. Mr. Gilliam replied it is a unique property in that it is a single-family home because it has only one kitchen facility intended for one family which constitutes a singular dwelling unit. This property is unique in that it has a separate living space in a detached building that predates any language in the Land Use Ordinance, Mr. Gilliam continued. Mr. Cadigan offered this property is grandfathered from further ordinance requirements.

Ms. Dufoe commented this Application does not meet the definition of a roomer as the roomer has to be in the primary residence; the owner and the renter have to be in the same building. Ms. Dufoe also cautioned that in approving this Application it could set a precedent to allow others to turn a barn, shed or garage into an illegal accessory apartment. Mr. Gilliam responded by stating it is not fair to characterize this property as an illegal accessory apartment when in fact it is a living space in a detached structure that predates the zoning definition that presumably doesn't allow for that.

Mr. Gilliam further explained when the roomer ordinance was being drafted the intent was to make these properties owner-occupied so they were not being run by absentee landlords. Mr. Dufoe commented the fact is

the Applicant is converting a detached shed into a separate dwelling unit and living in it while she rents her house out. Mr. Gilliam replied the Applicant is not converting anything as the dwelling already exists.

Mr. Cadigan asked the Board members if they had other questions for either the Applicant or the Code Enforcement Officer.

Mr. Fessenden asked if there was a definition for residence in the Land Use Ordinance. Mr. Gilliam replied there are a couple different definitions in the Land Use Ordinance that apply. The relevant definitions are for dwelling which identifies single-family, two-family and multiplex and also dwelling unit along with the performance standards for residential roomer accommodations.

Citing Section 7.14.B.6 which states “The rooms occupied by the roomers are within the principal structure.” Mr. Fessenden asked if there are 2 buildings is there a principle structure? Mr. Gilliam replied Yes there is a principle structure.

Mr. Gilliam cautioned the Board members must review each application on its own merits as there will certainly be different interpretations on how properties fall within the Ordinance. The Town considers Ms. Young’s property as a single-family dwelling since the second structure doesn’t have cooking facilities, Mr. Gilliam added.

Mr. Cadigan asked if the Town views the 2 structures on Ms. Young’s property as a single dwelling unit? Mr. Gilliam responded that in this instance, yes because it doesn’t fit any other definition.

Mr. Cadigan opened the Public Hearing for this Application. There were no comments or questions from the audience in attendance. Mr. Cadigan closed the Public Hearing.

Mr. Cadigan began the Board’s deliberations by offering his opinions that Ms. Young’s property is unique and grandfathered as a singular unit. Mr. Gilliam added the property operates as a single-family dwelling.

In connection to Ms. Dufoe’s concerns, Mr. Fessenden asked if a person put a bedroom in their boathouse in Cape Porpoise, would they be allowed to rent it as a bedroom? Mr. Gilliam responded the town would view that as an accessory apartment as defined in the Ordinance.

Mr. Gilliam, Mr. Cadigan and Ms. Dufoe had a brief discussion on the definition of accessory apartments.

Mr. Fitzgerald suggested the Board members review the performance standards for residential rental accommodations since the Code Enforcement Office has already defined this property as a single-family residence. The board members agreed within Mr. Fitzgerald’s suggestion.

Mr. Cadigan read each item in section 7.14.B. The Board members had little discussion regarding items 1 through 4.

Mr. Cadigan read Article 7.14.B.5 which states “The rooms occupied by the roomers do not have a separate entrance from the outside.” Ms. Dufoe argued the roomers in this instance have a separate entrance than the owner. Mr. Cadigan disagreed with Ms. Dufoe’s statement citing the Code Enforcement Office has deemed this property as a single dwelling unit that has more than one entrance.

Mr. Cadigan commented that the difficulty is the property’s configuration that pre-dates the restrictions of this Ordinance but the Board cannot ignore the fact that some things are grandfathered.

Mr. Gilliam attempted to clarify for the Board members by stating the language [in Article 7.14.B.5] does not mean you can’t have 2 doors in the house.

Ms. Dufoe offered her opinion that the reason for this particular requirement is so the owner and the roomer are in the primary residence and the primary residence has an entrance. Ms. Dufoe speculated the reason this condition was added is to ensure that the roomer was going to live in the same house as the owner and not have people living in outbuildings.

Mr. Cadigan read Article 7.14.B.6 which states: "The rooms occupied by the roomers are within the principle structure." Mr. Cadigan, Mr. Fitzgerald and Mr. Fessenden agreed with the Code Enforcement Office's assessment that the principle structure is the entire property. Ms. Dufoe maintained her opinion that this is not a permitted use since the owner will be living in a separate structure than the roomer.

Mr. Cadigan read Article 7.14.B.7 which states: "The roomers use utilities which are not separately metered from those used by the remaining occupant of the dwelling unit." Ms. Young confirmed there is only one meter for the property.

The Board members had no questions or concerns with the requirements in Article 7.14.B.8.

Mr. Cadigan read Article 7.14.B.9 which states: "The owner of the Residential Rental Accommodation shall remain in residence while rooms are being rented." Ms. Dufoe again stated her opinion that this is not in keeping with the requirements due to the fact the owner will be residing in a separate building from the renter.

Mr. Ayer offered his opinion that he is troubled with the whole idea of people renting out rooms and contemplates it is something that will change the community and the town in many ways.

Mr. Gilliam explained during the drafting process of this Ordinance it became clear in regards to renting a home there was no specific guidance that required the property owner to be in residence and there was a lot of discussion about loopholes and how to tighten those up.

Mr. Ayer asked how the Code Enforcement Office would ever find out if the owner was in residence? Mr. Gilliam responded that one of the things that is different is this requires a license that has some suspension language so although it is not perfect it sets the expectation that property owners would remain in town. Mr. Ayer agreed with the reasoning Mr. Gilliam explained but questioned how the town would be able to enforce such requirements.

As further explanation Mr. Cadigan read the following section from Article 7.14: "Such rentals and the revenue they make to homeowner's help make Kennebunkport affordable for persons on fixed or limited incomes; enhance and diversify accommodations available to visitors and tourists; and provide travelers with affordable accommodations from which to explore Kennebunkport and the Seacoast region. If not made the subject of appropriate, limited regulations, however, the use of residential properties for Residential Rental Accommodations may create adverse impacts on surrounding residential uses including, without limitation, increased levels of traffic, parking demand, light and glare, and noise".

Since this is the first time the Zoning Board has addressed this issue, the Board members unanimously agreed to vote on each performance standard as outlined in Article 7.14.B. Mr. Cadigan read each standard and the Board voted as follows:

1. *No separate kitchen or cooking facilities are provided for or use by the roomers;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fitzgerald seconded the motion and the vote was 5-0 in favor of the motion.

2. *No sign is located on the premises advertising the availability of rooms for lease or rent to roomers;*
- Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 5-0 in favor of the motion.

3. *No alteration or change of the dwelling unit in its exterior appearance is made to accommodate the presence of roomers;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 5-0 in favor of the motion.

4. *The bedroom(s) being rented shall be inspected by the Code Enforcement Officer and shall have code compliant smoke and carbon monoxide detectors in addition to complying with current building code requirements for primary and secondary means of escape;*

Mr. Cadigan made a motion the Application meets the Performance Standard and that the Code Enforcement Officer inspection is a contingent element of this approval. Mr. Fessenden seconded the motion and the vote was 5-0 in favor of the motion.

5. *The rooms occupied by the roomers do not have a separate entrance from the outside;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 4-1 in favor of the motion. Ms. Dufoe voted against the motion.

6. *The rooms occupied by the roomers are within the principal structure;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 3-1-1. Ms. Dufoe opposed the motion. Mr. Ayer abstained from voting. The motion did not pass.

7. *The roomers use utilities which are not separately metered from those used by the remaining occupants of the dwelling unit;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 5-0 in favor of the motion.

8. *One (1) off-street parking space per room rented shall be required as per Article 6.10 6;*

Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion and the vote was 5-0 in favor of the motion.

9. *The owner of the Residential Rental Accommodation shall remain in residence while rooms are being rented.*

Mr. Cadigan read the Performance Standard. Mr. Ayer commented the Application meets this Performance Standard to the extent that it can be enforced by the Code Enforcement Office. Ms. Dufoe agreed with Mr. Ayer's statement. Mr. Cadigan made a motion the Application meets this Performance Standard. Mr. Fessenden seconded the motion. The Board members voted 5-0 in favor of the motion.

Ms. Dufoe asked Mr. Gilliam if the Applicant's property is on town sewer. Mr. Gilliam replied it is connected to town sewer. Ms. Dufoe asked if the separate building has its own sewer connection. Ms. Young replied the two buildings are tied together with the one sewer connection.

Mr. Cadigan commented the Board has agreed this Application meets all of the Performance Standards and has approved this Application. Ms. Dufoe pointed out the Board did not vote to pass Standard #7.14.B.6. since there were only 3 votes of approval and the Board needs to approve items with a vote of 4 or more.

Mr. Cadigan referred to the Zoning Board of Appeals By-Laws which states: "A quorum shall consist of four (4) members of the Board... Decision on any matter before the Board shall require the affirmative vote of a majority of the entire membership of the Board."

Mr. Ayer asked to recast his vote on Performance Standard #6 to change his abstention to cast his vote in favor of the motion that the Application meets the Performance Standard. Mr. Cadigan announced the Board has voted 4-1 in favor of the motion on Performance Standard 7.14.B.6. Ms. Dufoe again opposed the motion.

Mr. Fitzgerald made a motion the Zoning Board of Appeals approve the Application of Sara Young seeking Residential Rental Accommodations approval for her existing single-family home. Mr. Cadigan seconded the motion and the Board voted 4-1 in favor of Mr. Fitzgerald's motion. Ms. Dufoe voted against the motion.

Ms. Young thanked the Board members for their approval and stated she has been a longtime resident and this will allow her to affordably remain in her home.

Mr. Cadigan called a brief recess from the meeting before reviewing the other Applications on the Agenda.

4. ***Nora & Richard Tryon*** – *The Applicants are seeking Residential Rental Accommodations approval for their existing two-family home. The property location is 27 Long and Winding Road, Tax Map 14, Block 003, Lot 08 in the Farm and Forest Zone.*

Mr. Cadigan introduced the Agenda item noting the Board will review this Application in the same manner as the previous Agenda item.

Mr. Dick Tryon addressed the Board stating he and his wife have owned their house at 27 Long and Winding Road since 1981. In 2006, Mr. Tryon explained they renovated their single-family house and converted it into a 2-family home with each side having approximately 1,500 sq. ft. Mr. Tryon explained his daughter and granddaughters live one side of the now 2-family home and he and his wife would like to rent out the master bedroom and bathroom of their side of the house. Mr. Tryon concluded by stating there is one main entrance to his side of the house and a second entrance from the deck.

Ms. Dufoe asked the Applicant if there were only 2 bedrooms in his side of the house. Mr. Tryon replied yes. Ms. Dufoe questioned why the tax card lists 5 bedrooms for the property. Mr. Tryon explained there are 3 bedrooms in his daughter's section.

Mr. Fessenden asked the Applicant if he was asking permission to rent 2 bedrooms. Mr. Tryon responded he would only be renting the master suite.

Ms. Dufoe asked how often the Applicant will be renting the room. Mr. Tryon replied he understood he can only rent for a maximum of one week but would hope to rent for a minimum of 2-3 nights.

Mr. Ayer questioned if there was a limitation on the length of a room rental, adding the intent of the roomer ordinance is to not have people renting rooms to different customers on a daily basis. Mr. Tryon responded he does not intend to do that and will only have one turnover a week.

In reference to a comment made earlier in the meeting regarding insurance, Mr. Tryon offered he does have insurance and is registered with the State of Maine and pays sales tax to the state.

There were no further questions from the Board members.

Mr. Cadigan opened the Public Hearing.

Mr. Rick Wolf, a former innkeeper in town and the owner of a company that brokers country inns and bed & breakfasts in the U.S. addressed the Board cautioning that this new roomer ordinance is essentially a commercial enterprise and should be regulated as such. Mr. Wolf suggested the town needs to treat everyone who asks for a permit is held to the same standards as any licensed lodging property in the town.

Mr. Cadigan noted this is the first time the Board has applied this particular ordinance.

Mr. Wolf offered his opinion that the town needs to recognize that the renting of rooms is not just so someone can affordably remain in their house but it is a commercial enterprise and should be regulated as such. Mr. Wolf also offered he resides at 26 Long and Winding Road and is a neighbor of the Applicant. As a private road, Mr. Wolf questioned whether the guests of the Applicant will be contributing for the repair and maintenance of the road.

There were no other comments from the audience in attendance.

Mr. Cadigan closed the Public Hearing.

Mr. Ayer thanked Mr. Tryon for his comments adding this Application is very different than the first Application previously heard this evening.

Mr. Cadigan also thanked Mr. Tryon for his comments and noted the Zoning Board of Appeals is not a drafting board and does not compose any town legislations.

Due to the thoroughness of the Application, Mr. Fitzgerald made a motion the Board vote on the Performance Standards as one vote rather than go thru each individual item. Mr. Ayer seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

Mr. Cadigan read a brief statement from the Applicant which was included in their Application summarizing their purpose in applying for this approval and that their intention is “to minimize the impact of such on the surrounding neighborhood”.

Mr. Cadigan quickly read through each Performance Standard in Article 7.14.B.1 through 9. Mr. Fitzgerald made a motion the Application for 27 Long and Winding Road meets all of the Performance Standards as stated and should thereby be granted approval. Mr. Cadigan seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

5. ***Patricia & Maurice Hutchins*** – *The Applicants are seeking Residential Rental Accommodations approval for their existing single-family home. The property location is 115 Main Street, Tax Map 22, Block 003, Lot 17 in the Cape Porpoise West Zone.*

Mr. Cadigan introduced the Agenda item and explained the order of procedure for the Applicant.

Ms. Patty Hutchins, along with her husband Maurice, addressed the Board stating they have an extra bedroom in their house they would like to rent out. Guests would have their own bathroom and they have plenty of parking on site, Ms. Hutchins added.

Ms. Dufoe commented there is an accessory apartment at the Applicant’s property as well. Ms. Hutchins replied her aunt and uncle live in their finished garage that contains a bedroom and large living room. Ms. Dufoe asked not counting the garage area, how many bedrooms are in the house? Ms. Hutchins replied there are three but she will only be renting one bedroom.

Ms. Dufoe asked how often the Applicant plans to rent the room. Ms. Hutchins responded she would mostly rent for the weekend and begin to advertise in the fall and around Prelude.

There were no further questions from the Board members.

Mr. Cadigan opened the Public Hearing.

Ms. Diane Hutchins, the Applicant’s daughter and neighbor addressed the Board to verify Ms. Patty Hutchins intends to only rent one of the bedrooms and that there is plenty of parking on property.

There were no further comments or questions from the audience in attendance.

Mr. Cadigan closed the Public Hearing.

Mr. Cadigan read each of the Performance Standards in Article 7.14.B. and the Board voted as follows:

1. *No separate kitchen or cooking facilities are provided for or use by the roomers;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

2. *No sign is located on the premises advertising the availability of rooms for lease or rent to roomers;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

3. *No alteration or change of the dwelling unit in its exterior appearance is made to accommodate the presence of roomers;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

4. *The bedroom(s) being rented shall be inspected by the Code Enforcement Officer and shall have code compliant smoke and carbon monoxide detectors in addition to complying with current building code requirements for primary and secondary means of escape;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

5. *The rooms occupied by the roomers do not have a separate entrance from the outside;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

6. *The rooms occupied by the roomers are within the principal structure;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

7. *The roomers use utilities which are not separately metered from those used by the remaining occupants of the dwelling unit;*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

8. *One (1) off-street parking space per room rented shall be required as per Article 6.10 6; and*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

9. *The owner of the Residential Rental Accommodation shall remain in residence while rooms are being rented.*

Mr. Cadigan made a motion the Application meets this standard. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

Mr. Cadigan made a motion the Application for 115 Main Street, Kennebunkport meets all of the Standards of Performance for a roomer and is hereby approved. Ms. Dufoe seconded the motion and the vote was unanimous; 5-0 in favor of the motion.

Mr. Fessenden made a motion to authorize the Chairman of the Zoning Board of Appeals to prepare the Findings of Fact. Ms. Dufoe seconded the motion and the vote was unanimous.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous.

Submitted by: Patricia Saunders, Recording Secretary