

Kennebunkport Zoning Board of Appeals
32 North Street, Village Fire Station
March 9, 2020 @ 7:00 P.M.

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, March 9th, 2020. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. Paul Cadigan (Chair), April Dufoe, Wayne Fessenden, Jim Fitzgerald, Kevin McDonnell, Karen Schlegel

Absent Members: Gordon Ayer

Others Present: Andrew Welch Asst. CEO, Werner Gilliam CEO

1. Attendance

Mr. Cadigan opened the meeting, took attendance and confirmed a quorum.

2. Approval of minutes from February 10th, 2020 and any other minutes not previously approved.

Mr. Cadigan stated there are two sets of minutes that need to be approved, those from the February 10th, 2020 meeting and the minutes from the September 24th, 2019 meeting.

Mr. Gilliam explained Town Counsel Amy Tchao reviewed the September 24th, 2019 meeting minutes and made some minor changes along with one substantive change in the wording of one sentence on the second to last page, the paragraph above the bulleted list. The new sentence should read: "Attorney Tchao shared the following notes from the Board's deliberations and asked for Board input including the following points in the Board's findings:".

Ms. Schlegel made a motion to accept Attorney Tchao's revised version of the September 24th, 2019 meeting minutes. Mr. Fessenden seconded the motion and the vote was 5-0-1 in favor of the motion. Mr. Cadigan abstained from voting.

Mr. McDonnell made a motion to approve the minutes from the February 10th, 2020 meeting. Mr. Fessenden seconded the motion and the vote was 5-0-1 in favor of the motion. Mr. Fitzgerald abstained from voting.

*3. **Ocean Woods Resort Owner, LLC, f/k/a Goose Rocks Hotel, LLC / Ralph Austin, Esquire, Authorized Agent** –for approval to rescind or amend a 1988 Zoning Board of Appeals decision, in order to allow new owner termination of condominium. 71 Dyke Road, Assessor's Tax Map 37, Block 5, Lot 2 & 2Z in the Goose Rocks Zone.*

Mr. Cadigan introduced the Agenda item.

To avoid any questions regarding a conflict of interest, Mr. Fessenden acknowledged his 30+ year professional relationship with two of the partners in the Applicant's law firm, Attorney Keith Jacques and Attorney Harry Center. After a brief discussion, the Board members agreed there is no conflict of interest in having Mr. Fessenden participate in tonight's meeting. Mr. Cadigan made a motion that after this disclosure of Wayne Fessenden, the Board will allow him to continue to hear the matter before us this evening involving a party representative that he uses on his own. Ms. Schlegel seconded the motion and the vote was 5-0 in favor of the motion. Mr. Fessenden abstained from voting.

Attorney Amy McNally addressed the Board and gave a brief summary of their Application stating Ocean Woods Resort is requesting to rescind a Zoning Board of Appeals decision from 1988 given the current status of the hotel and her client's plans to move forward to operate the property as a hotel, not as a condominium.

Mr. Cadigan stated the original Application was filed by Goose Rocks Hotel, LLC and Attorney McNally's firm represents Goose Rocks Hotel, LLC, who, at that time their interest in the property was as purchaser of said

resort. Attorney McNally agreed with Mr. Cadigan's statement adding the property was assigned to Ocean Woods Resort, LLC who currently hold the title to the hotel.

Mr. Cadigan asked if there is a relationship between the Goose Rocks Hotel and Ocean Woods Resort owner. Attorney McNally replied they are the same member entities meaning the same people are in charge.

Mr. Cadigan explained the reason he is asking is in the original Application there is a letter of authorization from your firm from the Applicant before the Board and asked if there has been a subsequent filing that gives you authorization to represent them before the Board this evening. Attorney McNally replied they did provide an updated authorization signed by Mr. Wang dated February 27th, 2020.

Mr. Fessenden asked how much of the property is condo ownership. Attorney McNally replied her client owns the entire parcel, 100% ownership of what was once condominium units but there is no intention of operating the property as condominiums. Ms. Schlegel asked if the property were ever used as condominiums. Attorney McNally responded she does not know for certain, but they have been operating as motels. Mr. Gilliam added only three units of which were ever sold as condominiums but were subsequently bought back by Ocean Woods Resort, so the town has only ever had the tax card for the hotel and the other 3 units.

Mr. Fessenden asked how many total units are there. Mr. Gilliam replied it was originally approved for 35 of which only 3 were sold but have since all been purchased back. Mr. Cadigan added it does not mean there were only 3 it is just that only 3 were purchased. Mr. Gilliam added only 3 that generated a deed and a subsequent tax card.

Ms. Schlegel asked if the Applicant is asking the Board to rescind the condominium use. Attorney McNally responded not exactly; there was a decision by this Board in 1988 that amended the declaration from 1987 which put certain restrictions on the use of them to comply with the Ordinance and so that limited our client's ability to rescind the condominium status of the property because it stalled the Declaration in place without approval from this Board.

Mr. McDonnell asked if the restrictions that were applied when the property was condominiums prevent it from being a hotel. Mr. Gilliam responded it is important to distinguish the difference between use and ownership. Mr. Gilliam further explained that he pulled a copy of the 1991 Land Use Ordinance and found there wasn't any distinct language within the hotel/motel standards that addressed the kitchenette elements in some of the units on the property which subsequently resulted in the restriction being placed. In the current Land Use Ordinance there is an allowance for kitchenettes in hotel rooms, Mr. Gilliam added, condominium declarations and plans are now reviewed by the Town Attorney and the Code Enforcement Office and those are not subject to a Board of Appeals review. So that is why we now have a past decision that was done under different language in a previous version of the Ordinance and some controlling language that brings this review back to this Board, Mr. Gilliam concluded.

Ms. Dufoe commented that back when the original affidavit was filed Ocean Woods was running as a hotel and it hasn't changed in the 20-30 years allowing it to be condominiums. Mr. Gilliam agreed with Ms. Dufoe's comment. Ms. Dufoe asked Mr. Gilliam if he had any issues with this Application's request. Mr. Gilliam replied No he does not.

Ms. Dufoe questioned if the Board approves the Applicant's request, would the Ordinance today allow kitchenettes to be placed in all the units. Mr. Gilliam responded that he can't speak to Applications that haven't been filed but pointed out there is very specific language in the Ordinance that talks about rooms that have kitchenettes are not be used as residences or used to establish residency.

Mr. Cadigan asked if the kitchenettes would be allowed today under the current Ordinance. Mr. Gilliam replied Yes, they would.

Mr. McDonnell asked if the Applicant is fully within their rights to go back to a hotel status, why are they here before this Board. Mr. Cadigan explained when the prior owners went to put in wet bars in some of the units they were cited for a violation by the Code Office and appealed that decision to this Board. Mr. Cadigan continued saying this Board made a compromise to allow them to have wet bars, but as part of the approval in 1988 there was a requirement proposed that they couldn't change the condominium declaration without the permission of this Board so in order for the current owner to terminate the condominium ownership they need this Board's approval either by rescinding the 1988 decision or by a different pathway to reach the same conclusion.

For clarification, Mr. Cadigan added the only reason the Applicant is here is to terminate the condominium form of ownership that the affidavit precludes the owner from doing unilaterally because this Board needs to approve any change in the Declaration of Condominium.

Ms. Schlegel asked if the Applicant intends to renovate the rooms and add kitchenettes to all of the units and would there be any type of timeshare sale of any of these units. Attorney McNally replied the owner has no intention of selling the property but as far as renovation, she can't speak to any immediate plans to that.

Mr. Cadigan expressed his reluctance to rescind a valid decision made by a previous Board and asked if the Board authorized the owner to terminate the condominium, would that satisfy Article 16 of the Declarations? Attorney McNally replied she believes that would be sufficient but questioned what would happen with the rest of the conditions in the affidavit.

Ms. Dufoe commented she thinks the owners would like to have a clean title to the property. The Board members and the Applicant had a brief discussion on the specific language to satisfy both the Applicant and the Board.

Mr. Cadigan opened the Public Hearing.

Mr. Wesley Phillips, an abutter, addressed the Board asking if there was a grand plan for the property. Mr. Gilliam replied he has not received any plans for redevelopment of the property at this point.

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

Mr. Cadigan closed the Public Hearing.

Mr. Cadigan expressed his opinion that he would prefer to not overturn a prior decision in the process of granting the Applicant's request.

The Board members had a detailed discussion on how to grant the Applicant's request without specifically rescinding a prior Zoning Board's decision.

Mr. Cadigan made a motion the Board allow the Applicant to change the Condominium Declaration sections governed by this prior decision and that change may include a termination of a condominium and that the restrictions in the affidavit of Mary Huff, Chairperson of the Kennebunkport Board of Appeals of 1988 recorded at the York County Registry of Deeds in Book 4960, Page 224, that the restrictions imposed in that affidavit that are articulated in paragraphs 1 and 3 are restrictions on items that are now allowed under the Land Use Ordinance and therefore they be lifted. Ms. Schlegel seconded the motion.

Ms. Dufoe amended Mr. Cadigan's motion to include that these Findings be recorded in the York County Registry of Deeds. Mr. Fessenden seconded Ms. Dufoe's amendment.

Mr. Gilliam questioned if the Board should include in their approval mention of the previous Findings of Fact that declared the affidavit mentioned in Mr. Cadigan's motion.

Mr. Cadigan amended his motion to include the following language at the beginning of his previously amended motion to state: "Pursuant to the Findings of Fact of the Zoning Board of Appeals dated January 12, 1989 and the affidavit of the Board Chairperson Mary Huff recorded in the York County Registry of Deeds in Book 4960, Page 224, that this Board approves the proposed change of the Applicant to change the Declaration so it may be terminated."

Mr. Gilliam asked the Chairman to include reference to Item #4 as well in his motion. Mr. Cadigan agreed to Mr. Gilliam's request.

The Zoning Board of Appeals members voted unanimously in favor of Mr. Cadigan's amended motion.

Mr. Cadigan made a motion to authorize the Zoning Board of Appeals Vice Chairman to sign the decision letter on tonight's matter. Ms. Schlegel seconded the motion and the vote was unanimous.

Other Business:

Mr. Cadigan gave a detailed explanation of a new appeal and a request from Mr. Slager's Attorney regarding a previous Application before the Zoning Board of Appeals.

The Board members had a lengthy discussion with Mr. Gilliam regarding Mr. Slager's request to allow his previously filed appeal to apply to a decision that happened after the appeal. The Board members agreed unanimously that Mr. Slager needs to file a separate Application to appeal the Code Enforcement Officer's decision. Mr. Cadigan agreed to email Mr. Slager's Attorney of the Board's decision.

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

Submitted by: Patricia Saunders, Recording Secretary