

**Kennebunkport Zoning Board of Appeals
Virtual Meeting (Via Zoom)
October 26, 2020 @ 6:00 P.M.**

A virtual meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, October 26th, 2020. The meeting convened at 6:00 p.m. via Zoom.

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

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

1. Attendance

Mr. Cadigan opened the meeting, explained the format and process for tonight's Zoom meeting, took attendance and confirmed a quorum.

2. Approval of minutes from March 9th, 2020 and any other minutes not previously approved.

All members attending tonight's meeting were present at both the March 9th, 2020 meeting and the June 8th, 2020 meeting and thus are eligible for voting approval.

Mr. Fitzgerald made a motion to approve the minutes from the March 9th, 2020 Zoning Board of Appeals meeting. Ms. Dufoe seconded the motion, and the vote was unanimous.

Mr. Fitzgerald made a motion to approve the minutes from the June 8th, 2020 Zoning Board of Appeals meeting. Ms. Dufoe seconded the motion, and the vote was unanimous.

*3. **Lauren Tenney, Applicant*** – The Applicant requests approval for a residential rental accommodation at her single-family home located at 92 Wildes District Road, Assessor's Tax Map 21, Block 4, Lot 12 in the Village Residential Zone.

Mr. Cadigan introduce the Agenda item.

Ms. Lauren Tenney addressed the Board stating she resides in a single-family home with 3 bedrooms and is wishing to rent out a 4th bedroom above the garage with an en suite bathroom on AirBnB.

Mr. Cadigan asked Ms. Tenney if she is aware of the requirements for a Residential Rental Accommodation in the town ordinance. Mr. Tenney replied yes.

Ms. Schlegel asked the Applicant if the renting of the room meets the specific standards in the ordinance such as having smoke detectors, etc. Ms. Tenney replied the room has a king size bed with a countertop and sink, a small refrigerator under the counter, a microwave, and a bathroom with a shower. Smoke detectors are also installed, Ms. Tenney added.

Mr. Fitzgerald asked if the renters will be using the same entrances and exits as the Applicant. Ms. Tenney responded we enter our home through the garage where there is a door to our house but the renters would use the same door only they would go to the left up the stairs to above the garage.

Ms. Dufoe questioned whether having a microwave in the room constituted cooking facilities per the performance standards. Mr. Gilliam responded stating this question has arisen before of what constitutes cooking facilities but generally speaking the ordinance is broad enough that you could conceive of the microwave as a cooking facility and clearly a sink meets the sanitary requirement of a kitchen.

Ms. Dufoe commented that having a separate sink and microwave allows people to rent this room for more than just a night or two.

Ms. Dufoe then questioned if the parking requirement was met. Mr. Gilliam replied as for the parking requirement in the Land Use Ordinance a single-family dwelling is required to have 2 spaces which the 2 car garage meets the parking requirement. Ms. Dufoe asked if there is enough room on the lot for a renter to park. Mr. Gilliam responded yes, there is room for another vehicle in their driveway within the boundaries of the property as required in the ordinance.

Mr. Cadigan asked what the requirements, if any, for a space to qualify as a residential unit and what is needed to show as cooking utilities. Taking this outside of the context of this particular Application, Mr. Gilliam stated, if he were to walk into a home to do a standard Certificate of Occupancy inspection he would not accept a hotplate on a countertop as a cooking facility for a single-family home as there is an expectation there would at least be a stove but there have been other instances in town at hotels that have had a sink, minibar, and microwave that does not constitute as a kitchenette. Mr. Cadigan then asked if someone were looking for a Certificate of Occupancy with a microwave, sink and refrigerator would that meet the cooking requirements. Mr. Gilliam replied he would not see that as meeting the cooking requirements for a single-family home.

Mr. Gilliam also commented that one of the questions that often comes up is whether you are dealing with a separate dwelling unit and looking at this from a building code perspective there is not a separate unit as such.

Ms. Tenney commented that in her research she was told that cooking facilities were defined as a stove and that having a mini-fridge and microwave in a bedroom is a convenience similar to a dorm room. Ms. Tenney added it is not her intention to have anyone cooking in that space.

As for parking, Ms. Tenney noted that she had her driveway expanded so there is space for 4 cars at the back of her driveway.

Mr. Fitzgerald asked if the microwave was built-in or just sitting on the counter. Ms. Tenney replied it is sitting on the counter.

Mr. Cadigan opened the Public Hearing portion of the meeting. There were no comments or questions from the viewing audience. Mr. Cadigan closed the Public Hearing.

Referring to the Performance Standards in the Land Use Ordinance for Residential Rental Accommodation, Mr. Cadigan read Article 7.14.B.1. which states: "No separate kitchen or cooking facilities are provided for or use by the roomers;" and asked the Board members if they believe what exists in the Applicant's room qualifies as a kitchen.

Ms. Schlegel offered her opinion that it does not qualify as a kitchen but noted other similar Applications they have approved have been a bedroom only.

Mr. Fitzgerald and Ms. Dufoe agreed with Ms. Schlegel's statement.

The Board members and Mr. Gilliam had a brief discussion on the definition of cooking facilities and kitchenettes in hotels and dwelling units.

Mr. Cadigan then asked the Board members if a sink, a refrigerator, and a microwave meets the definition of cooking facilities. Ms. Schlegel and Mr. Fitzgerald agreed that it does not and feels it is more of a convenience.

Ms. Dufoe stated she could agree with Ms. Schlegel and Mr. Fitzgerald if there is a condition in the approval of this Application that there can be no long-term renters in that space.

Mr. Cadigan asked the Applicant if the renter would have access to the remainder of the house. Ms. Tenney responded stating definitely not during these Covid times and it is not her intention in the future either to have any renters into the rest of the house with her family.

Mr. Cadigan asked the Applicant if she had any issue if a period of time for any singular renter such as less than a month, was affixed as a condition of approval. Mr. Tenney replied it is her intention to not have long term renters.

Mr. Cadigan asked if Ms. Tenney was insisting to maintain a microwave in the unit. Ms. Tenney responded she would like to maintain a microwave in the unit and if she were not allowed to do so it would seem to her to be a more punitive view by this Board.

Mr. Cadigan acknowledged receipt of an email from an abutter, Ms. Sara Young that was received on October 25th which is less than the required 7 days prior to this hearing. Because it was not received before the required period per the town ordinance, Mr. Cadigan stated he would not read the letter into the record.

Mr. Cadigan read through the remaining Performance Standards of Article 7.14.B in the Land Use Ordinance on Residential Rental Accommodations. Mr. Cadigan asked the Board members if they had any concern regarding the Applicant meeting any of these requirements. Ms. Schlegel and Mr. Fitzgerald replied they had no concerns.

Referring to the letter received from the abutter, Ms. Dufoe questioned whether Ms. Tenney was at the residence when she was renting the room in the past. Mr. Cadigan reminded the Applicant that if the room is being rented the owner has to be in the home. Ms. Tenney responded that she and her husband own the house but she has adult children who live with them and if she is traveling for work and her husband is visiting family for one of those nights, does that constitute her breaking the rule because one of those nights she is not present? All the Board members agreed yes that is a violation of the ordinance as the intention is that the owner is in control of their property and supervising the rental.

After some discussion, the Board members agreed to add a condition of approval that there be no long-term rental.

Ms. Dufoe also reminded the Applicant that she can only turn over the room once a week as per the Ordinance. Ms. Tenney responded she was not aware of that requirement. Ms. Dufoe read the requirement from Article 7.14.A. which states: "The permitted accessory use of no more than two (2) bedrooms in a legally existing dwelling or dwelling unit. This dwelling unit shall be an owner occupied dwelling. Rooms rented may be for either short term or long term rental to a roomer who may be unrelated to the owner or occupant of the unit. Individual rooms shall be rented no more than once per week. For purposes of this section a week shall be defined as Monday through Sunday."

Ms. Dufoe made a motion the Board approve the Residential Rental Accommodation Application of Lauren Tenney with the condition that the room be rented for no longer than 30 days. Ms. Schlegel seconded the motion. Ms. Cadigan suggested an amendment to the motion to state the condition is for a total of 30 days or less per tenant. Ms. Schlegel seconded the amended motion, and the vote was 4-0 in favor of the motion as amended.

Mr. Cadigan reminded the Board members that they need to hold elections again for the chair, vice-chair and secretary positions at a future Zoning Board of Appeals meeting.

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

Submitted by: Patricia Saunders, Recording Secretary