

BLACK POINT BEACH CLUB - ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
Friday, JUNE 25th, 2010
MINUTES

A Public Hearing and Regular Meeting of the Black Point Beach Club Zoning Board of Appeals was held on Friday evening, June 25, 2010 at 5 PM in the Black Point Beach Association Clubhouse located on 6 Sunset Avenue in Niantic, CT.

PRESENT: Bill Willetts, Chairman, Paul Bollo, Secretary, Phil Hagaman,
Joyce Wojtas, Paul Pendergast

ALSO PRESENT: Attorney Matthew Greene, representing the applicant
Maureen Lowney, Applicant

ABSENT: Anita Schepter, Alternate

1. Call Public Hearing to Order

Chairman Willetts called the Public Hearing to order at 5:00 PM.

2. Read Notice of Public Hearing

Mr. Willetts asked Mr. Bollo, Secretary to read the Notice of Public Hearing:

Case No. 2-2010:

Application of Maureen C. Lowney appealing the Zoning Officer's action under Section III, Item 4 of the Black Point Zoning Regulations denying her application to conduct a Home Occupation of Dog Grooming at her property located at 62 Bellaire Road, Niantic, CT.

Mr. Willetts said that this notice was published in The New London Day on 6/12/2010 and 6/19/2010. Mr. Willetts presented the certificates of mailing for the record; this was entered as **Exhibit A**.

3. Introduction of Zoning Board of Appeals members

Mr. Willetts asked the Board Members to identify themselves for the audience. The members did so.

4. Poll ZBA Members for conflicts of interest –

Mr. Willetts polled the Board members for any conflicts of interest – hearing none – he noted to the applicant and the audience that they would need four votes in favor for the appeal to be granted.

Mr. Willetts then asked the applicant to present his case.

Attorney Matthew Greene, place of business 300 State Street, New London, CT said that he is representing the applicant Maureen Lowney who is also present this evening. He explained that this is an appeal of the 2/18/2010 denial of the request for a home dog grooming business. Section III, Item 4 a and b state that it must be in the dwelling and that while it is not a listed item, the regulations provide that home occupations are not limited to what is listed. They are within the dwelling and the occupation will not exceed 25% of the floor area (it is actually less than 15% and will be located in the attached garage and an attached garage is part of the dwelling by virtue of the attachment). He said that they feel that the ZEO erred in saying that it is not in the dwelling as their own definitions state that it is. With regard to noise that the ZEO said this occupation could generate, there is no need to follow up with that as the error is that the ZEO is saying that the garage is not part of the dwelling and it is. An attached garage is a part of the dwelling and as that was the basis for denial, it should be the basis to overturn the denial. He reiterated that the regulations state that home occupations include but 'are not limited to' the items that are listed. With regard to traffic and items bringing traffic, a closing on a house would certainly bring more traffic than a dog grooming business. He added that the applicant has also been before the Zoning Commission and that they had called this business

similar to a barber shop and he said that he does not believe that should be a point of discussion tonight as the words of the ZEO denial is that it is not a part of the dwelling and a garage is part of the dwelling. Regarding the ZEO statement that it 'may be noisy' – there may be noise in any neighborhood – such as people arguing, and people do have pets and a barking dog outside could certainly be louder than a dog inside. However, that aspect is not relevant and he asked that they find that the basis for the ZEO denial regarding the dwelling was in error.

Mr. Bollo asked Attorney Greene to describe the business.

Attorney Greene said that it would occupy a 12' x 24' section of the garage with an entrance around the back. The most dogs that could be seen in one day would be 2-3 as Ms. Lowney has to be the only employee. There would be no weekend appointments unless there was an emergency where, for example a dog was sprayed by a skunk. A dog would be there for grooming for perhaps a half day. The intent of the regulations is with regard to traffic and traffic for a barbershop is totally different. Ms. Lowney would be here and this would be a convenience to the residents who live here to drop their dog off and then come and pick it up.

Mr. Bollo asked if there would be 3 to 4 dogs done per day and some 6-8 car trips.

Attorney Greene said no, that is not possible – on the worst day 3 dogs could be done and that would only be 6 trips – 3 in and 3 out. He said that 6 trips would be a lot less than kids coming and going.

Mr. Willetts asked what type of equipment would be needed to groom dogs.

Maureen Lowney, applicant said that the equipment necessary is a stainless steel bath tub, a dryer (no heat element) and a table. She explained that she cleans, shaves and bathes the dogs and that it easily takes over a half hour to dry a small dog such as a Maltese. It would be by appointment only. She said that she went to school for this and is a certified groomer.

Mr. Willetts asked if she has a license.

Ms. Lowney said that one is not required and that she is licensed by the Agriculture Department.

Mr. Bollo asked what she does with the dog when she is finished.

Ms. Lowney said that she calls the owner and crates the dog until the owner comes. She said that she has one crate. It takes an average of 2-3 hours to do a small dog and 4-6 hours to do a large dog. She said that there are a lot of people with dogs here and this would be convenient for them.

Mr. Willetts called for anyone from the public who wished to speak in favor of this application –

Ms. Foley, 65 Indianola Rd. said that she did go in and volunteer at Ms. Lowney's shop and that when she was there she saw her do 2 dogs and the small dog took 2.5 hours to do. She said that she was very impressed with how she does her business and she does not see any traffic problem. People with kids would be coming and going more in a day than what the business would bring.

Barbara Johnston, 35 Sea Crest Ave. said that she had items that she wanted entered into the record as exhibits – she presented **Exhibit B** – the decision of the ZEO and the minutes and his addition to them and **Exhibit C** – Motions from the Zoning Commission meeting of 4/24/2010. She said that she thinks that this would be a welcome business for this community and she is in favor of it.

William Boardman, 43 Bellaire Rd. said that there are a lot of elderly people in this area and many would love to have a small dog but do not have the means to keep them up and this would afford them those means.

Ms. Juarte Stendite, 11 Sunrise Ave said that she was present to support Ms. Lowney as this is a good service for the community and would be beneficial. The dogs would be groomed by appointment and it would not cause problems.

Mr. Willetts called upon the ZEO, Mr. Mullen – asking if he wanted to say anything.

Mr. Mullen, ZEO said that it is important to stick straight to the regulations when they are talking attached and detached garages and if they are part of the dwelling. He said that he looked in Webster's Dictionary and while they say that anything attached to the house is part of the dwelling, the regulations do not consider a garage as part of the habitable area and you don't habituate a garage. Black's Law Dictionary supports the

regulations. With regard to how big the business could be – there are no restrictions and anyone who is a relative can be part of the business. He explained that this was denied by the Zoning Commission members as he asked them if this is what they intended for their community and they said that they did not. He asked them if they wanted to allow a home occupation with dogs and explained that they cannot have it in the garage because it is not part of the 'dwelling'. The business would have to be inside the home.

Mr. Willetts called for anyone from the public who wished to speak in opposition to this application –
Hearing no one –
He asked if Attorney Greene had any further comments.

Attorney Greene said that Mr. Mullen was on point at the beginning of his comment while referencing Real Estate Black Law but he forgot to look at the BP Regulations as it states that an attached garage is part of the dwelling. It does not say 'for human habitation.' It states part of the dwelling and the dwelling is the single family residence. He noted that it is actually a 12' x 12' space and that regardless of how many people there are in the family – there are only so many people who can fit in a 12' x 12' area which is what the permit would be for. They have rules and that is also why you have ZEO's. He said that he does not think that they can make statements that Ms. Lowney 'is' or 'may' – they can't sit and think that the intention of the permit is to violate it – that is not your or Mr. Mullen's purview. He submitted letters from neighbors in favor of the application – these were entered as **Exhibit D** (letters in favor from: Helen Cairns, 54 Bellaire Rd; Rev. Baldu, 11 Sunrise Ave.; 43 Bellaire Rd.; Pat Foley, 65 Indianola Rd.; Stephanie Brandon, 15 Billow Rd.; Pat Hayden, 48 Sea Breeze Ave.; Ann Farley, 39 Sea Crest Ave. and Janice & Tony Orsini, 21 Sea Spray Ave.) He said that he thinks that it is nice that neighbors are in favor of this and submits that the ZEO misinterpreted the regulations.

Ms. Lowney said that it is not her intention to close her business in Town and that this is more of a convenience for the neighbors and residents here.

Ms. Wojtas asked about the first issue of the attached garage and noted that the BP Regulations seem to follow Town Zoning and those cite livable floor area.

Attorney Greene said that the BP Regulations just make reference to 'dwelling' and not to floor areas gross or net.

Ms. Wojtas said that she would think that they would need the Town also when the Department of Agriculture comes in.

Attorney Greene said no, the BP Regulations trump the Town's as they are a municipality on their own. He said that he believes that the area that is being referred to is solely for area and under both net and gross they meet the regulations and under the definition of dwelling they meet the regulations as they are under the 25%. Also, Ms. Lowney is the only person who would be working there, no signs would be placed out and with respect to noise, vibration, dust – that refers to non-typical sounds such as in manufacturing and a dog barking is a sound that you could certainly hear in the community.

Mr. Mullen, ZEO congratulated Ms. Wojtas for reading the regulations correctly and for noticing that it allowed for the judgment on the part of the Commission on the occupation. He said that the intent is to be in habitable area and a garage or basement are not habitable because they do not meet the building code. The Commission makes the decisions and it is their call and they can't ignore item b and only look at item a.

Attorney Greene said that it is a permitted use as no where does it say that it goes to the Zoning Commission for a decision. It goes only to the ZEO and they have to look at his basis for denial. His statements on building code are way off the path. They are looking at net floor area and what the regulations state and he said that he does not believe that an artist is going to set up their work in the middle of the living room – they would work in the basement, which is inline with the regulations just as a garage is part of the dwelling. Also the regulations do not exclude dog grooming but rather things done out of the ordinary. The intent here is to be in a 12' x 12' area and when they look at the intent he believes that they have met the regulations. It is very clear that the attached garage is part of the dwelling and that it meets the definition of a permitted use as it is not excluded and also meets the other regulations.

Ms. Wojtas asked if they would be operating in the winter months.
Attorney Greene said yes.

Ms. Wojtas asked if it would be a heated area.

Attorney Greene and Ms. Lowney said that the State says that it has to be a 12' x 12' heated area.

Mr. Willetts asked if there were any final comments.

Ms. Johnston said that she knows that Attorney Greene is not from this area and wanted to state for the record that an attached garage is part of the dwelling.

Mr. Willetts closed this public hearing at 5.55 PM.

REGULAR MEETING

Mr. Willetts opened the Regular Meeting for Case No. 2-2010 at 5:56 PM.

Case No. 2-2010:

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Mr. Willetts noted that they could take no further public comment on the application. He called for comments from the members.

Mr. Bollo asked Mr. Mullen where he had said that he found the definition of dwelling. Mr. Mullen said it was in the Black's Law Dictionary – Pocket Edition.

Mr. Willetts said that they have to deal with if the ZEO properly applied the regulations.

Mr. Bollo said that if they look at the regulations and the items that appear in bold type as being defined items – then the word dwelling in 4.b. is not in bold.

Mr. Hagaman said that he took issue with that and asked where in the regulations it states that words in bold are meant to be taken in some other way – and if that was to be the case then it would have to be clearly stated. Since nothing is stated regarding words in bold, they need to read it as it is and not infer something else.

Mr. Bollo said that he thinks that the use is much closer to things that are not allowed such as the beauty shop, barbershop, etc.

Mr. Hagaman asked if they are to establish if they can have this or not and if they are granting it or making a determination on if the ZEO is wrong or not. He said that he thinks that they only have to determine if a mistake was made in the interpretation and if so, then the discussion is over, they need not go onto item b., etc.

Mr. Bollo disagreed with that and said that he thought they had to look at all of it.

Mr. Willetts said that zoning operates on a permissive basis of - if it is not listed, it is not permitted. With this, he said that because it is not listed as a permissive occupation, it becomes prohibited.

Mr. Hagaman said that the list also states that it is not exclusive and that he thinks that they are totally wrong as the garage is part of the dwelling and they are off course here. They need to decide the issue of if the ZEO erred in interpreting the regulations and it is his opinion that he did and that this should never have been denied.

Mr. Bollo said that he thinks that the decision is okay and that it is a prohibited use and that it is like a barbershop as was stated.

Mr. Hagaman said that he could not agree and that there is no way that a dog grooming business is as busy as a barbershop or on the same scale.

Mr. Willetts said that he thinks that Mr. Bollo is correct and called for a motion, noting that they would need four votes to overturn the ZEO's interpretation.

****MOTION (1)**

Mr. Bollo moved to DENY the Application of Maureen C. Lowney appealing the Zoning Officer's action under Section III, Item 4 of the Black Point Zoning Regulations denying her application to conduct a Home Occupation of Dog Grooming at her property located at 62 Bellaire Road, Niantic, CT.

Ms. Wojtas seconded the motion.

Mr. Willetts called for a vote on the motion.

Vote: 3 – 2 – 0. Motion to DENY passed.

Voted For the Denial: Mr. Bollo, Ms. Wojtas, Mr. Willetts

Voted Against the Denial: Mr. Hagaman, Mr. Pendergast

There being no other business before the BP Zoning Board of Appeals Mr. Willetts called for a motion to adjourn the meeting.

ADJOURNMENT

****MOTION (2)**

Mr. Hagaman moved to adjourn the June 25, 2010 meeting of the Black Point Beach Club Zoning Board of Appeals at 6:13 PM.

Mr. Bollo seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

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ADDITIONS MADE BY MR. WILLETTS & MR. BOLLO

Please make the following additions to the minutes of the June 28th hearing & meeting;

1. Note next to Paul Pendergast's name at top, that he arrived late.
2. After the record of the vote on the motion to deny, note to the effect that Mr. Bollo objected to Mr. Pendergast voting due to the lateness of his arrival at the hearing but that the Chmn. permitted him to vote based on his own assertion that he felt he had command of sufficient facts to properly vote.

(Cut and pasted from email from Mr. Willetts dated 7/13/2010)