

TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT
Meeting of August 5, 2010

Present: Ron Riquier, Martin Post, Lou Grob, Jay Hickory, Steve Malone
Richard Horner, Zoning Administrator

Guests: Tom Cavanaugh, Carla Cavanaugh, George Cone, Chris Corsones, Esq.,
Charlie Holland, Heather Holland, Jack Facey, Esq., Gloria Villari, Phil Villari

Ron Riquier, Chair opened the meeting at 5:12 p.m.

1. Approval of Agenda

Motion by Lou Grob to approve the agenda, Marty Post seconded. All in favor.

2. Organizational Meeting

Motion by Lou Grob to nominate Ron Riquier for Chair. Motion by Lou Grob to close nominations, Marty Post seconded. Vote on Ron Riquier for Chair. All in favor.

Motion by Lou Grob to nominate Marty Post for Vice Chair. Motion by Lou Grob to close nominations, Steve Malone seconded. Vote on Marty Post for Vice Chair. All in favor.

Motion by Jay Hickory to nominate Lou Grob for Clerk. Motion by Steve Malone to close nominations, Lou Grob seconded. Vote on Lou Grob for Clerk. All in favor.

3. Application 10-030

Ron Riquier opened the hearing on Application 10-030 by Charles Holland to appeal the decision of the Killington Zoning Administrator that the property located at 63 Telefon Trail is in compliance with the Killington Zoning Regulations concerning dwelling unit capacity. In his appeal, Mr. Holland states that the house is being occupied by more than the permitted 10 persons.

Ron Riquier asked each person present to introduce themselves. He then administered the oath to all appellants and their representatives.

Dick Horner provided some brief history. On April 21, 2010, he sent a Notice of Violation to Thomas and Carla Cavanaugh because a website advertised the house as sleeping up to 20 people. On April 26th, Tom Cavanaugh called to advise that he would have the website changed to reflect the 10 person occupancy. On May 20th, Dick performed a site visit and he found there to be 5 useable bedrooms with 2 useable beds per room for occupancy of 10 people. The website had also been changed to correctly state that the property had a 10 person occupancy limit. Therefore, in his opinion the violation has been cured.

Chris Corsones, attorney for Mr. & Mrs. Holland, thanked Mr. Horner for following up on this matter, however, Mr. & Mrs. Holland are very concerned about how the matter is going to

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proceed from here. It is his understanding that in 2005, there was a similar procedure that resulted in an inspection and the same assurances that the property would not be utilized in excess of its permitted capacity as a 5 bedroom house with 10 person occupancy. Then in 2009 the property was advertised as an 8 bedroom home with 20 or more person capacity. Additionally, one of the conditions of the permit is that the hot tub is not to be used after 11 p.m. and Mr. Holland made several calls to the State Police because of excess noise being generated by use of the hot tub after 11 p.m. He noted that one of the bedrooms has a set of bunk beds. The representations made were that the mattresses on the top bunks had been removed and those platforms were being used as storage and the ads in 2009/2010 show the mattresses back on the bunk beds. Mr. Corsones also noted that the permitted uses in this area are single family dwellings or two family dwellings. A dwelling as defined in zoning contemplates that either one or two families are living in a particular dwelling and are not just staying transiently for a week. He questioned whether the house could lawfully be used for short-term, transient type rentals. Horner noted that prior to Mr. Cavanaugh owning this property, it was owned by a ski club called Innisfree. Therefore, historically this property has never been used as a single family or two family house and in his opinion the use as a transient rental is grandfathered. He also noted that Killington is a ski economy and many of the single and two family homes are rental units. Mr. Corsones stated that his client is looking for assurance that there will never be more than 5 bedrooms with the capacity of two people per room, which may mean removing the bunk beds in one of the bedrooms.

In answer to Steve Malone's question regarding parking, Mr. Cavanaugh advised that the rental contract limits the number of cars to five and Mr. Holland advised that he has never observed the number of cars that are parked to see if they exceed the 5 car limit. It was noted that under the Zoning Regulations, this property must provide parking for up to 6 cars. Although there is enough parking spaces to comply with zoning, the five car limit was voluntarily placed by the Cavanaugh's in an attempt to assure that the occupancy does not exceed 10 people.

Jack Facey, Esq. attorney for Mr. & Mrs. Cavanaugh advised that the Cavanaugh's would like the flexibility of keeping the bunk beds, not for excess occupancy but for the flexibility of sleeping accommodations. When the Cavanaugh's bring their family up, the children like to stay together in that one room. The rental contract since 2005 has clearly stated that the maximum occupancy is 10 people and more than this is a breach of the contract. There is also language in the contract limiting the hours of use of the hot tub. It states that the hot tub cannot be used after midnight. Mr. Cavanaugh added that he has been trying diligently to enforce the noise condition. In addition to the midnight curfew, he has put up an 8 foot high plexi-glass wall around the hot tub. They mail a statement to all their guests and a copy is posted on the entry door to the spa that there have been issues with noise on the deck after midnight. The renters that ignored this request and were the cause of the noise complaint in January, did not get their deposit returned as a penalty and will not be allowed to rent this property again. The websites on which they advertise have consistently listed the property with 5 bedrooms and 10 person occupancy, however, a sub-tier layer of one of the websites did refer to bunk beds. That error was removed as soon as it became known. Mr. Cavanaugh feels they have gone to great lengths to comply with the law and would like to be a good neighbor.

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Horner confirmed that the listing on KillingtonChalets.com lists 5 bedrooms/10 person occupancy and on his inspection of the property, he found 5 bedrooms with bedding for 2 people each. There was one bedroom with a set of bunk beds, however, the mattresses for the top bunks were not in the frame but were in the storage room. Based on this Steve Malone questioned the need for a site inspection.

After some further discussion, the Board felt it could not be the furniture police and based on the fact that the property is now in compliance as evidenced by the change in the website listing and the Zoning Administrator's inspection confirming the property to be in compliance, Steve Malone moved to vote on a resolution without a site inspection. Lou Grob seconded. All in favor.

Motion by Steve Malone that the property is no longer in violation of the Killington Zoning Regulations as described in the Notice of Violation 10-248, Lou Grob seconded. All in favor.

4. **Application 10-031**

Ron Riquier opened the hearing on Application 10-031 by George Cone to appeal a decision of the Killington Zoning Administrator that there is no front setback violation at 1001 Dean Hill Road owned by Philip and Gloria Villari. In his appeal, Mr. Cone states that the house on the Villari property is in violation of the required 25 foot front setback.

Dick Horner advised that on December 21, 2009, George Cone gave him a letter, copy of a survey and some hand drawn surveys with hand written notes stating that the Villari house porch is less than the required 25 feet from the front property line. He had also mentioned that there were survey markers that he used to verify his measurements. On June 2nd, Horner inspected the property. He did not find any survey markers making it difficult to determine where the setback line was. After taking a measurement based on the survey that is filed in the Killington Land Records and accounting for normal roof overhang, Horner determined that there was not enough evidence to issue a setback violation. Mr. Cone has subsequently provided some additional information, including photos, however, Horner still did not feel there was enough evidence to issue a violation.

George Cone advised that he received a drawing from the Villari's on or about January, 2007 regarding a possible land swap that they were discussing. The survey had been prepared by Richard Lunna and shows the land swap area between the two properties and shows the corner of the Villari's house and porch. He scaled the drawing and found the corner of the porch to be 1 foot to 1 ½ feet into the setback area. He pointed out the markers on the survey which he indicated have been verified.

Horner noted that the only survey on file in the Land Records is different from the one presented by Mr. Cone. Using the survey on file and taking into account the 6-8 inch roof overhang, he found that if anything it is a matter of inches into the setback area and could well be right at the line.

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Steve Malone advised Mr. Cone that you cannot scale off a copied survey because the scale gets distorted in the copying process. It is also not known if the placing of the house on the survey is the exact location or if it was drawn in as a point of reference. He noted that it would be better if there was an actual survey that showed the infraction on the setback. This is a very serious decision that is being asked of the ZBA and reliable information is needed.

Jack Facey, Esq., attorney for Mr. & Mrs. Villari, advised that the pin from which Mr. Cone took the measurement is not a reliable pin and is currently a wooden stake. The pins across the road are believed to be reliable and if a measurement is taken from those pins, one will find the house is not in violation of the setback. Mr. Villari added that the pins in this area have a history of having been moved and some have gone missing.

Ron Riquier pointed out from a previous Finding of Fact from October, 2006 regarding the Villari/Cone properties that the ZBA “found that reliance on property marker pins located across the road are not reliable enough to determine the property line location for the Cone property”. Therefore, the same would apply in this case.

Motion by Steve Malone at 6:50 p.m. to recess the hearing for a site visit, Lou Grob seconded. All in favor.

The hearing was re-opened at 7:20 p.m. following the site visit. At the site visit, due to the topography, lack of proper instrumentation and expertise, the ZBA was not able to confirm that a setback violation exists. On the other hand, Mr. Cone felt the site visit confirmed his conclusions as to the locations of the pins, however, understanding the need for professional documentation, Mr. Cone asked to recess the hearing to allow him time to obtain a survey from Richard Lunna. Mr. Facey objected to this stating that Mr. Cone had the burden of proof and should have been prepared with this information prior to this hearing.

After some further brief discussion, the original mylar of the survey on file was retrieved from the Town Clerk’s vault and scaled. The result showed the corner of the porch to be right at the 25 foot setback line. Mr. Cone concurred that the filed drawing is different from the copy he based his evidence on. Although he still believes there is an infraction, the measurement scaled off the filed drawing is close enough that he cannot refute it.

Motion by Steve Malone that there is not enough evidence of a setback violation to issue a notice of violation, seconded by Jay Hickory. All in favor.

The hearings on Applications 10-030 and 10-031 were recessed to August 25th at 5:00 p.m.

5. Other Business

The restaurant with 2 apartments on the second floor owned by Frank Toughill across from the Pasta Pot is presently a non-conforming use in the Valley District. Mr. Toughill would like to convert the restaurant into 2 additional apartments. Horner advised that zoning allows a non-conforming use to be converted to another non-conforming use upon approval of the ZBA only if the Board finds the degree of non-conformity is not greater than the original non-conforming

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use. Horner noted that 2 additional apartments making it a total of 4 apartments is less of a non-conforming use than what currently exists with the restaurant.

Motion made by Steve Malone that the non-conforming use that is presently there be changed to a less non-conforming use by adding 2 apartments for a total of 4 apartments and removing the restaurant, seconded by Jay Hickory. All in favor.

Motion by Martin Post to adjourn the meeting at 7:40 p.m., seconded by Jay Hickory. All in favor.

Respectfully submitted,

Lucrecia Wonsor
Recording Secretary

NOTE: These minutes have not been approved by the Zoning Board of Adjustment and are, therefore, subject to change.