

**TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT**  
**Meeting of January 17, 2019**

**PRESENT:** Ron Riquier, Charlie Demarest, Daniel Mielcarek  
Paul Buhler, Interim Zoning Administrator; Kevin Brown, Town Attorney  
Lucrecia Wonsor, Recording Secretary

**GUESTS:** Foster Chandler; Brook Dingledine, Esq.; Phoebe Flemming; Judyann Flumano;  
Edwin Fowler; James Haff; Chet Hagenbarth; Ely Kirschner; Sally Koch;  
Michelle Lord; David McComb; Bill Meub; Bob Montgomery; Whit Montgomery;  
Maureen Prencipe; Vito Rasenas; Katy Savage; Ken Wonsor; Bob Zazzera

Ron Riquier, Chair opened the meeting at 6:00 p.m.

**1. Approval of Agenda**

Dan Mielcarek moved to approve the Agenda. Charlie Demarest seconded. All in Favor. Carried.

**2. Approval of Minutes**

Charlie Demarest moved to approve the Minutes of November 7, 2018 as may be amended. Dan Mielcarek seconded.

Ron Riquier amended Item 1 by adding the following after the word “item” in the first sentence: “3.1 – Approval of Minutes and”. He amended Item 3 to “3.1”. He amended the 1<sup>st</sup> sentence in 8<sup>th</sup> paragraph of Item 3.2 by removing the word “was” after “permit”.

Vote on approval of Minutes of November 7, 2018 as amended. All in Favor. Carried.

**3. Public Hearing**

Chair, Ron Riquier, opened the Hearing on Application 18-049 by Vincent Connolly, Killington Mountain House, LLC to appeal a decision by the Killington Zoning Administrative Officer.

Ron Riquier, Chair, administered the oath to those attendees who indicated they would be giving sworn testimony noting that Attorneys are exempt from taking the oath. Town Attorney, Kevin Brown, presented the Town’s position. He noted that Richard Horner sent a notice of violation dated November 2, 2018 that laid out the reasons for the Notice of Violation which was for changing the use of the property from residential to commercial without obtaining a Change of Use Permit as required by Section 10 of the Zoning Bylaws. This change of use is evidenced by: i) a short term rental agreement from December 5, 2005 provided by Appellant’s attorney showing that the property is being rented to a number of people not to exceed 28 people; ii) when the Appellant purchased the home the Vermont Property Transfer Return dated November 10, 2005 listed the use of the property prior to transfer as a residential property and the use after the transfer as a “Camp/Vacation Property” and when the Appellant transferred the property into Killington Mountain House LLC, the Vermont Property Transfer Return dated July 16, 2014 listed the use of the property before and after the transfer as “Commercial”; iii) the Division of Fire Safety has classified the property as a “hotel” because it can be occupied by up to 28 people;

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iv) the Department of Environmental Conservation has required the Appellant to obtain a public water supply permit because of the increase in capacity from 6 people up to 28 people; and v) Mr. Connolly did not obtain a Change of Use Permit after he purchased the property in November, 2005 and prior to renting it to 28 people in December of 2005.

Brook Dingedine, Esq. asked that the Notice of Appeal dated December 5, 2018 prepared by Attorney Jon Anderson and submitted by Vincent Connolly be submitted as an Exhibit. She noted that when you rent your home for 1 day or multiple days at a time, the transaction of money for use of the property is a commercial transaction. She argued that the Town Bylaws do not have definitions that would classify what is going on at this property as commercial. Based on her brief research there are many properties in the Town of Killington that are rented out – short term or long term – and those property owners are engaging in commercial activity. Attorney Dingedine maintains that this is still a one family dwelling because the documents provided show that the house is rented to an individual who is able to bring his family or his friends and family. As long as the property only offers one kitchen and none of the rooms can be locked to create separate living spaces like a hotel, it is not a hotel according to the Town's definition of a hotel in the Bylaws. She noted that the law must be applied to this case. She questioned what precipitated Mr. Connolly being targeted for these violations. She noted that there are no occupancy limits in the law and provided copies of advertisements on VRBO for homes in Killington showing occupancy that exceeds the 2 people per bedroom rule. She submitted into evidence a list of 13 properties, noting that was what she found on a quick search. The list contained the web address of the advertisement, the square footage of the home, number of people it sleeps, the number of bedrooms and the number of bathrooms. She cautioned the ZBA that if this violation is not reversed, they will be setting a precedent and they will have to go after all other similar rentals, otherwise this would be a selective enforcement. Ron Riquier questioned whether she verified whether these properties had the proper permits in place and her response was no.

Charlie Demarest noted that the Board only needs to answer one question which is whether or not it agrees with the Zoning Administrator's decision. The issue of selective enforcement does not apply in this hearing. He asked Paul Buhler, Interim Zoning Administrator, to read the allowed used in a Residential 3 District, which he did.

Town Manager, Chet Hagenbarth, noted in response to Attorney Dingedine's argument that the property does not meet the definition of a hotel under the Town Bylaw's, it also does not meet the qualifications of a dwelling unit because under our Bylaws the dwelling unit capacity is no more than 2 people per bedroom.

Attorney Brown noted that the issue here is - has the use changed from the use permitted as far as the Zoning Administration is concerned. It was a single family residence at the time of sale and at the time of the previous zoning permits – did the use change no matter what label you want to put on it. He does not agree with the selective enforcement argument as it is not different if you get stopped for speeding and you tell the Trooper that all the other people were speeding as well. The Town does not have to prosecute everyone. It has to enforce the Zoning law, but how it does it in light of its administration, capacity, budget – the court gives deference to.

Edwin Fowler commented that he owns a house about a half mile from this property and the traffic generated by this property can be as much as 14-20 cars a day. He also owns 7.5 acres above this property and this property is affecting the value of his property because of the number of cars at this house.

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James Haff noted that this house has a 3 bedroom zoning permit and the owner is advertising it as having 5 bedrooms – that in his opinion is a change of use. Additionally, there is an Agency of Natural Resources letter dated October 17<sup>th</sup> which states that the Appellant has exceeded the Clean Slate Exemption January 1, 2007 and additionally the water system currently providing water for 24 or more people per day requires a transient non-community (TNC) water system permit. Mr. Connolly, upon receiving this letter, applied for a TNC water permit. He questioned how many families would consider themselves transient whereby they would need to apply for such a permit. There is also a letter from Act250 dated February 22, 1973 approving a 16 lot residential subdivision. It states that the water supply and wastewater systems as well as the roadway and the parking networks are approved based upon usage as typical 3 or 4 bedroom private homes. Any change would require an Act250 Amendment.

Attorney Bill Meub noted that Section 610 of the Town of Killington Zoning Bylaws states that “any change in use without a Zoning Permit is improper. He also pointed out Page 1 of the Bylaws which states that “the interpretation and use of the Zoning Bylaws, except as defined herein, words and phrases shall be construed according to their commonly approved uses of the language. Therefore, the term “uses” which is being used does not have a definition it tries to capture the concept that if you use any building differently than it was used before, you need to ask for a permit.

There being no further discussion, Dan Mielcarek moved to approve the Zoning Administrator Officer’s decision as stated in the Notice Of Violation of November 21, 2018. Demarest seconded. All in Favor. Carried.

Town Attorney, Kevin Brown, will have the written decision out within 45 days.

#### 4. **Other Business** – None.

Charlie Demarest moved to adjourn the meeting at 7:15 p.m. Dan Mielcarek seconded. All in Favor. Carried.

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.