

TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT
Meeting of November 7, 2018

PRESENT: Ron Riquier, Charlie Demarest, Gerard Gross, Daniel Mielcarek, Martin Post
Richard Horner, Zoning Administrator; Kevin Brown, Town Attorney
Lucrecia Wonsor, Recording Secretary

GUESTS: Jon Anderson; Beth Castellini; Foster Chandler; Rick Cohen; Andy Colonghi;
Barbara Foley; Edwin Fowler; Jim Haff; Chet Hagenbarth; Cliff Koch; Sally Koch;
Cathy Martin; David McComb; Bill Meub; Bob Montgomery; Whit Montgomery;
Jill Post; Maureen Prencipe; Katy Savage; David Wasilauskas; Joan Wise;
Vince Wynn

Ron Riquier, Chair opened the meeting at 5:30 p.m.

1. Approval of Agenda

Ron Riquier amended the Agenda to add item 3.2 - Continuation of Meeting from October 17, 2018. There being no objections, the Agenda was approved as amended.

2. Executive Session: Meet with Town Attorney

Daniel Mielcarek moved to go into Executive Session to meet with Town Attorney, Kevin Brown. Marty Post seconded. Discussion.

Charlie Demarest objected to going into Executive Session for this purpose as people in the audience should hear what is discussed. ZAO, Richard Horner, noted that part of the discussion may include attorney/client privilege and, therefore, he recommended going into Executive Session.

Gerard Gross moved that the motion be amended to have minutes of the Executive Session taken. Charlie Demarest seconded. Town Attorney, Kevin Brown, noted that minutes are not taken of Executive Sessions since they cannot be made public record. After some brief discussion vote on motion to have minutes taken of the Executive Session. All in Favor. Carried.

Vote on original motion to go into Executive Session with the Recording Secretary. 4 in Favor; 1 Opposed (Charlie Demarest). Motion Carried.

The Zoning Board moved into Executive Session at 5:40p.m.

The Zoning Board moved out of Executive Session at 6:15 p.m. and resumed the meeting.

3. Approval of Minutes

Marty Post moved to approve the Minutes of October 17, 2018 as may be amended. Charlie Demarest seconded.

Ron Riquier amended Item 2, 2nd Paragraph by adding a sentence after the second sentence as follows: "The Chair immediately reminded Mr. Burke that he cannot make a point of order but he was allowed to speak." He amended a typographical error in the last sentence of the same 2nd Paragraph – "with" should be "within". He also amended the first sentence of the 3rd Paragraph to correct the initials of the Zoning Administrative Officer from "ZOA" to "ZAO".

Vote on approval of Minutes of October 17, 2018 as amended. All in Favor. Carried.

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3.2. Public Hearing: Continuation of Meeting of October 17, 2018

Chair, Ron Riquier, re-opened the Hearing on Application 18-036 by Vincent Connolly, Killington Mountain House, LLC to appeal a decision by the Killington Zoning Administrative Officer.

Ron verified that all those that would be giving testimony had taken the oath. Town Attorney, Kevin Brown, noted that Attorney Burke had filed two motions at the initial hearing. The first being that the Notice of Appeal was out of time and that motion has been withdrawn. The second was regarding the sufficiency of the content of the Notice of Appeal. That motion has not been withdrawn and the Board has decided to hear testimony to get to merits of the appeal while preserving that argument if needed.

Horner provided a brief history of the violation. He noted that he was made aware that Mr. Connolly was renting the house at 287 Estabrook Road under the name of Killington Mountain House LLC to 32 people. He sent a Notice of Violation on August 2, 2018 concerning dwelling capacity noting that his advertisement would require there to be 16 bedrooms in the house, while Town records show the house to have 3 bedrooms and that he changed the use by adding bedrooms with no permits.

Jon Anderson, Attorney for Appellant, Vincent Connolly, provided the Board with a letter outlining the Appellant's position. They maintained that the property is a single family home and that it has 3 bedrooms. Mr. Connolly rents to one individual who organizes the group. The definition of Dwelling Unit Capacity of two occupants per bedroom appears in the current Zoning Regulations and not in the Zoning Regulations of 2004 or 2006. Since Mr. Connolly started renting the home in 2005, even if he is in violation of the current Zoning Regulations, because it was prior to 2006 they are grandfathered as a pre-existing, non-conforming use.

The Chair opened the floor to questions from the Board and then the Public present. Charlie Demarest asked if the Appellant had obtained a public building permit from the State prior to 2014. The Appellant responded that 2014 was the first interaction with the State when he installed the sprinkler system as required in public buildings with occupancy of 16 or more. Town Attorney, Kevin Brown, read the definition of "Non-Conforming Use" in the Vermont Statutes and noted that in order to enjoy "grandfathered" status an owner would have had to be in compliance with all other laws and bylaws and the burden of proof lies with the Appellant if he is claiming grandfathered status. Mr. Brown noted that Appellant provided a copy of a short term rental agreement dated December, 2005 and to operate a public building at that time would have required a permit from the State's Division of Fire Safety, therefore, the question before the Board is was the Appellant in compliance with all permits prior to renting out the property in 2005.

ZAO, Richard Horner, noted that the Town Zoning Bylaws have always required that a permit be obtained for a change of use. He pointed out that the Vermont Property Transfer Tax Return Form when this property was purchased by the Appellant in November, 2005 listed the use prior to the sale as "Primary Residence" and after the sale as "Camp/Vacation". When the Appellant transferred the property into Killington Mountain House LLC in July, 2014, the Vermont Property Transfer Tax Return Form lists the use of the property prior to and after the sale as "Commercial". Mr. Horner noted that Commercial uses are not permitted in a Residential 3 District and the Appellant did not apply for a change of use permit nor did he apply for any permit to convert the garage into a game room and entertainment area.

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Using his mobile phone, Jim Haff found the ad for Killington Mountain House on the internet and noted that it is being advertised to families, businesses and large groups. It also advertises the house has having 5 bedrooms. The question was raised as to whether the Appellant had applied for permits to add 2 bedrooms and it was noted that no town permits had been applied for.

Ron Riquier questioned whether any changes had been made to the septic system to accommodate the added load since it was originally built for a 3 bedroom/6 occupant home and if so, was a State permit was obtained. The Appellant responded that no changes were made to the septic system. Appellant's Attorney added that under clean-slate rule a permit is not needed because they have not changed the use.

Several neighbors voiced their concerns regarding the septic. They also complained of noise from the various groups that rent the house. Whit Montgomery noted that many times renters come into his home by mistake. Sally Koch added that the property is located in the Cricket Hill Development and is subject to the Cricket Hill Covenants. Attorney Brown noted that the Town cannot consider Covenants in this hearing as that would be a Civil matter.

Town Manager, Chet Hagenbarth, noted that Mr. Anderson is employed by Primmer Piper Eggleston & Cramer and that law firm represents the Town of Killington in its dealings with the Bond Bank. There could be a possible conflict of interest with Mr. Anderson representing Mr. Connolly in this matter should it be appealed to the Environmental Court.

After this matter had been discussed at length, Charlie Demarest moved that the Appellant, Killington Mountain House LLC does in fact violate the Zoning stipulated in ZAO, Richard Horner's letter, the property has more than 3 bedrooms and more than 6 person occupancy, therefore, the appeal is denied. Marty Post seconded. All in Favor. Carried.

Marty Post moved to authorize Chair, Ron Riquier, to sign the Findings of Fact and Conclusion of Law on behalf of the Zoning Board. Daniel Mielcarek seconded. All in Favor. Carried.

4. **Other Business** – None.

Marty Post moved to adjourn the meeting at 8:20 p.m. Charlie Demarest 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.