

**TOWN OF HOLDERNESS
Zoning Board of Adjustment**

Regular Meeting Minutes September 10, 2019

Members Present: Robert Maloney, Chairman; Bill Zurhellen, Member; Kristen Fuller, Member; Jude Ruhm, Member; Eric MacLeish, Member

Staff Present: Linda Levy, Land Use Boards Assistant

Others Present: Bill Waldrip, Bob Snelling, Carl Lehner, Angi Francesco, Bruce Falby, Celia Wooverton, Anne Lovett, Georgene Fabian, Mimzie Uhler, Roger Uhler, Dave Moore, Suzanne Riehs-Moore, Bonnie Hunt, Stephen Girard

CALL TO ORDER:

The meeting was called to order at 6:15 P.M. A roll call of the members was taken and a quorum was present.

APPROVAL OF MINUTES: August 13, 2019

MOTION: "To approve the minutes of the June 6, 2019 meeting as amended."

Motion: B. Zurhellen

Second: K. Fuller

Discussion: None

Motion Passed: 5 – Yes, 0 – No, 0 – Absent, 0 – Abstain

Case #441-08-13: Application submitted by David Moore and Suzanne Riehs-Moore for the property located at 36 Currier Field Rd. identified as Tax Map #213-048-001 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Articles 300.4.1.1 and 300.4.1.2 (Permitted Uses and Special Exceptions) to use an upper level detached garage as an ADU.

B. Maloney opened the public hearing at 6:20.

D. Moore circulated a photo of the property. The home is on a 1.89-acre lot. There is a detached barn. The septic system is for a 5-bedroom home, there are currently 3 bedrooms in the home. There is no basement and no space for additional sleeping areas. The application is to allow an ADU in the accessory building – the barn. The barn shares the driveway, the septic, the water, and the power with the primary home. It is situated in a manner that makes it impractical to attach the buildings in any way because of the distance – they are 100' apart. The addition of a dwelling unit in the upstairs space in the barn would not change the structure in any way, would not create a visual blight.

S. Riehs-Moore: It also wouldn't change anything as far as traffic is concerned. It is an in-law space that happens to be in the barn.

E. MacLeish: It looks like there are 2 levels in the barn. This is going to be on the 1st floor?

D. Moore: The upper level.

E. MacLeish: There are stairs?

D. Moore: Yes.

E. MacLeish: Are you going to put in stairs that will take them up the stairs?

D. Moore: The entry to the upper level is about half way up. The stairs have a very modest rise.

E. MacLeish: Where will the bathroom be?

D. Moore: The upper level.

B. Zurhellen: It is already connected to the septic?

D. Moore: Yes.

K. Fuller: Have other options been explored as far as adding on to the house to create an ADU that is attached or anything like that?

D. Moore: The objective was to utilize the existing buildings without adding additional development.

B. Maloney: Part of the issue that I see, in the way that Holderness defines an ADU, it is intentionally meant to be attached to the residential unit. This is 100' apart. Under normal circumstances, one of the things we look for is, why would this create any level of a hardship to you and your family. What is unique about what you have on your property that we would allow an exception to the attached issue? Part of our fear is setting precedent.

D. Moore: The hardship is the special relationship between the purpose of the zoning ordinance and the specific application of the provision of the ordinance to the property. Two of the abutting properties have ADU's. They are within the structure. The idea that ADU's are part and parcel of the neighborhood is established. The visual esthetic of the neighborhood is such that the building is a complement rather than combining and making a larger structure.

S. Riehs-Moore: The property can easily accommodate this unit – the way it is set up.

D. Moore: To connect the buildings is not practical – that is a hardship.

B. Zurhellen: On the drawings there seems to be a house. Is that an attached garage or a detached garage?

D. Moore: It is detached.

E. MacLeish: I don't think it is irrelevant that these are your parents that are moving in here. I'd like to know what the alternative would be if they could not move into this barn.

D. Moore: The alternative is purchasing another home. Financially, that would be a factor. Converting the space in the barn might have a cost of \$50-75,000. You can't buy a home in Holderness for that kind of money. The adult children who come to visit – there just isn't enough room in the house.

E. MacLeish: I think it is better to take care of your parents than your adult children. The primary proposed use is for your parents?

D. Moore: Yes.

B. Zurhellen: Is it complete with a kitchen?

D. Moore: Yes. Originally when I applied for this project, it was suggested that a dwelling unit would have sleeping, living and cooking facilities. It was suggested that there was no way you could get a 2nd dwelling unit on the property. So, I applied for a space without cooking facilities. When I got the denial, it spoke to ADU's and spoke to bunkhouses?

B. Maloney: Did it mention square footage?

D. Moore: Yes. The square footage is less than 800 sq.ft. It doesn't make sense to me that an ADU in an accessory building is different than an ADU within the primary structure. It is still an accessory use. It fulfills the purpose and intent of the ADU statute in that it uses existing infrastructure for the purpose of providing additional/affordable housing. That's why I have applied for the variance in this way.

E. MacLeish: Your original intent was to not have a kitchen.

D. Moore: My original application was with no kitchen. A space with sanitary and living facilities only.

E. MacLeish: How many days a year do you anticipate your parents living there?

D. Moore: Typically they get here in June and leave in October.

B. Zurhellen: Essentially seasonal.

B. Maloney: Anybody from the audience want to speak?

B. Snelling: I have been involved in the ADU issue from the beginning. One of the precepts of our ordinances is the concept of 1 dwelling per lot. That has to do with keeping the character of the town as a rural community. When the ADU law was passed, it wasn't discretionary for the towns. We had no choice but to approve ADU's. The concern was precedence. If you allowed an ADU unit separate from the primary building, if the person living there passes on and the property is sold, you now have 2 dwellings on a lot that could be rented out permanently or seasonally or whatever. It is precedent of creating a way of getting 2 dwellings on a lot. It opens up that door. The intent of the original family might be as a family, but might not be there forever and you're left with 2 dwellings on a lot. The precedent has to be considered for what is down the road if we allow these kinds of things to proliferate.

B. Maloney: Thanks. For those of you who don't know, the State of New Hampshire mandated that every town allow for an ADU. They had minimum and maximum requirements. It could be no larger than 800 sq.ft. It has to be attached. We had to adopt it and develop our own rules around that. They were approved by the voters 2 years ago.

D. Moore: In response to B. Maloney's statements relative to the statute requirement: The statute does not prohibit detached ADU's. There is a prohibition against requiring familial relationships between the occupant of the ADU and the occupant of the primary dwelling.

B. Maloney: It does not have to be a family relationship.

D. Moore: Correct. In fact, one of the abutters rents their ADU as an apartment. How do we reconcile the difference between an ADU within the primary structure and the ADU in an accessory building? It still is an accessory use. I suggest that the Town ordinance prohibits a detached ADU but rather it is not rented by right, like the attached unit.

B. Maloney: I would suggest that the ordinance reads attached. It says that it is required to be attached. We are stuck with the words.

J. Ruhm: I am curious why you couldn't build an add-on? What is stopping you from adding on?

D. Moore: Nothing. It would represent additional development on the lot.

S. Riehs-Moore: I would think the way the lot is set up and the house is currently set up, it would be extensive dirt work. Where would you put it?

D. Moore: There are always solutions to those kinds of things, but to me that is the \$10 answer to the \$.10 question. I have 800 sq.ft. on our lot in an existing building, why not use it?

B. Zurhellen: I need a clarification. What is the minimal building lot in the Town?

B. Maloney: 1 acre.

D. Moore: We have 1.89.

B. Maloney: Depending on the setbacks, you could attach something to the house.

B. Zurhellen: If there were a way to subdivide the lot into 2 lots, you wouldn't have an ADU, you'd have 2 lots with the same owner.

B. Maloney: Yes, but this lot is not subdivided.

J. Ruhm: You also need a minimum amount of road frontage.

K. Fuller: It seems like this doesn't meet the requirements for an ADU because it is not attached. It is a separate dwelling by our definition. Essentially putting 2 dwellings on one lot, if we were to approve this.

B. Zurhellen: What is the bunk house rule? Can it have a kitchen and bathroom?

B. Maloney: No

B. Zurhellen: Can it have a bathroom?

B. Maloney: No

L. Levy: (Reading from the ordinances): The definition says, "distinguished from a dwelling unit by being limited to sleeping facilities with no plumbing".

B. Maloney: So that eliminates that possibility.

D. Moore: A variance is a request to deviate from the zoning ordinance. In this case, adding a bathroom to a bunk house or putting an ADU in a detached building. I'm struggling to how you are not able to grant a variance when that is what I understand a variance to be.

B. Maloney: Typically, when we're dealing with variances, we're dealing with setback issues or septic issues. You can rebuild in the existing footprint, but you can't expand in the footprint. What you are running up against, in my opinion, is the definition of an accessory unit, it has to be attached.

E. MacLeish: I think this is potentially subject to a variance for this specific use on this specific lot with other ADU's in the neighborhood. Even though it is not attached, we could grant a variance that would

allow some portion of this to go forward. I would support without a kitchen so it doesn't lead to the kinds of problems that Bob was talking about.

B. Maloney: That would have to come back as a separate request. We are dealing with today's request.

B. Zurhellen: It's going to run into the fact that they are calling it an accessory dwelling unit as opposed to a 2nd residence. The intent was to have it attached so it could never be turned into a 2nd house. It would be hard to issue a variance in that situation without allowing it for every other person who wants a secondary unit, whether it is an apartment or a separate house.

K. Fuller: Could we approve a bunk house with a bathroom? That's an exception to the bunk house definition.

B. Zurhellen: The other option is to apply for a special exception. We can turn it down and then you have the right to go to the Town board and ask them for a special exception. I believe that can be time-limited. If you said you have to bring the parents here, they have no other place to stay, there aren't the financial resources, the Town board, theoretically could grant a special exception. This is meant that when those parents passed away, it would revert back to a barn. That is the only way out of this that I can see.

D. Moore: I thought special exceptions could only be requested if they were enumerated in the zoning ordinances. I did not see that.

B. Zurhellen: There is nothing that says you can't request a special exception.

B. Maloney: That's been done in the past. We've had one or two cases since I've been on the board.

D. Moore: When I was turned down for my request for living with sanitary facilities with no kitchen, the denial cited the bunk house and the ADU issues. When I paid for the variance request, I paid for both, so I would ask the board to consider both. It sounds to me that the ADU is a non-starter.

B. Zurhellen: What is the ground floor used for in the barn?

D. Moore: It is a garage.

B. Zurhellen: It has a current bathroom?

D. Moore: I ran the septic line over to the building when I poured the foundation.

B. Zurhellen: But there is no bathroom in there. What happens if that garage has the bathroom and the upstairs is simply a bunk house?

B. Maloney: It is still a structure. It just falls outside the 800 sq.ft. issue.

D. Moore: It is the opinion of the board then that requesting a bathroom in a bunk house is not something you'd be able to consider.

B. Zurhellen: I think that it would convert it to a different type of dwelling and it wouldn't be a bunk house anymore because then you could request a variance to add a kitchen to it.

D. Moore: But that's not what is before you today.

B. Maloney: Correct. I think you have 2 options before you. One is to proceed and have us vote. The second is to withdraw and not put any inference on what took place tonight. There is no rejection, there is no approval.

D. Moore: With a denial, there is an appeal?

B. Maloney: There is an appeal process that has to be appealed in a specific period of time.

D. Moore: By withdrawing, this never happened.

B. Maloney: I believe that a withdrawal is better than a potential rejection.

E. MacLeish: I would be inclined to support this for this specific property for this specific use. I believe you are going to put elderly parents there. I believe that could constitute an undue hardship. I would not approve the petition that was submitted because that's the kitchen. I think that creates the danger in the future for renting the space.

B. Zurhellen: I would go the special exception route as a time limit so the ADU is conditional and expires.

E. MacLeish: Can we do that as a condition of the variance?

B. Zurhellen: No.

D. Moore: Board of Selectman, is who you are referring to?

B. Zurhellen: Yes

B. Maloney: Linda, will you take a note that we ought to take a look at this? Meaning the ZBA take a better look at the special exception issue.

B. Zurhellen: I think we need to know what the Town and the State say, exactly what the rules are on it.

B. Maloney: What would you like to do?

D. Moore: Two questions. If there were more than 2 acres, this could become a cluster development?

B. Maloney: Do you mean if you were to acquire additional land?

D. Moore: Yes.

B. Maloney: You could then subdivide it; you could actually have a separate dwelling.

B. Zurhellen: I wouldn't do a cluster development.

D. Moore: If I were to attach the buildings, could I do a breezeway?

K. Fuller: The definition says through a common space such as a shared hallway.

L. Levy: It has to be enclosed.

D. Moore: I think we would like to defer.

S. Girard: I support them and what they're trying to do. There is a housing crisis that we're in right now. This issue is why.

B. Maloney: The whole concept of an ADU was a recognition of the cost of housing. I think what happened was there were a lot of people who couldn't afford to keep their own property. The taxes have gone up. The State said you could build an accessory dwelling attached and you could rent it out.

S. Girard: I'm surprised about the reaction in the room that it would be a rental. As an employer, this would be great. I understand the development issue.

B. Maloney: If they had come in and said they were going to attach it to our building, this would have been a different discussion. The fact that it is a whole different structure is the problem.

B. Zurhellen: It would set a precedent that creates hardship for everyone else in this town.

B. Maloney: And, with the time exception, if that is a possibility, we have gone there before. It is something that you should at least consider.

D. Moore: I view that of being impractical because of the cost of converting the space for what might be a matter of years. It doesn't make any sense. I see the challenges that you are faced with. Last question – What is the difference between having condominiums in separate buildings on one lot and having 2 dwellings on one lot?

B. Maloney: I have no idea.

B. Zurhellen: I advise you to look at the laws on condos, co-ops – there are major restrictions on those items. It is not quite as simple as it sounds.

D. Moore: Thank you very much.

Case #442-08-14: Appeal submitted by Petitioners Robert Rothschild, Celia Woolverton, and Roderick MacLeish for the decision of the July 16, 2019 Planning Board relative to Case #19-5-11, application of Cheryl Scott as Agent for the William and Sharrie Waldrip of 426 US Rt. 3 (tax map 241-072-000) for a change of use from short term to long term rentals at the Yankee Trails Motel.

B. Maloney: Introduced the case. Note: Eric has recused himself. Eric, are you willing to accept a vote of 4 instead of 5?

E. MacLeish: Yes, 4 is ok. This is an appeal from the determination that the Planning Board (PB) made on July 16th that the proposed new use of the Yankee Trails Motel was not a change of use under the zoning ordinance. The minutes of the meeting showed that the Yankee Trails was a motel and that the proposed change of use was not a change of use and that it would remain a motel. This is an appeal under RSA 676:53. We believe the PB made an error that it was not a change of use.

B. Maloney: The PB stated that there was no need for a change, correct?

E. MacLeish: If you take a look at the minutes on p. 14., the motion was, "We do not approve the application for changing the use of the Yankee Trails Motel from short-term to long-term rental because there is, after discussion, in actuality no change of use." This case is not about the Waldrips. They run a very good motel. They did the right thing by filing an application. They recognized that this was different, that it was changed use from short-term to longer term rental. Likewise, this is not about affordable housing. The proposed new use would have provided low cost housing units in a motel. Tenants need to have kitchen's, adequate resources, we need to plan for it, and converting small motel rooms to dwelling

units is not something that should be about affordable housing. The PB determination would mean that any housing units in the Town of Holderness could be converted into a dwelling unit without any review by either the PB or coming before this board for a variance. That's why we filed this appeal. This is happening all over the country, where motel units are being converted into dwelling units. That is not a bad thing, it has to be regulated. We have to look at what our ordinance requires. Our ordinance has a definition of what a motel is, one that can be used primarily for transient guests and offered to the public for compensation. Was the proposed use primarily for transient guests? The dictionary definition shows the same definitions of transient guests – "someone passing through or making a brief sojourn; staying or working in a place for a short term only; lasting for only a short time or temporary". On page 6 of the minutes, Ms. Scott stated that "we are not looking for transients". It is hard to understand how this definition can be applied to transients. "We'd like to keep people there as much as possible", "we'd like to see people in there for 6 months to a year". On page 11, she talks again about people staying there long term; "people who care about where they live". The proposed use would be a place where people would live, not where people would spend a few days. That is not a hotel. Ms. Scott repeatedly referred to these people as tenants, they would sign leases. Motel guests do not sign a lease. Under the proposed use the tenants would not get daily housekeeping. Motel guests typically get daily housekeeping. The residents in their proposal would have to take out their own trash. There would not be any kitchens in the units, but there would potentially be a common kitchen that they could use. This is very different type of set up than you would see in a motel. There was discussion that PSU students would rent these out. The proposed use is not a motel. It is proposed use for someone not passing through. It would also place a great deal of demand on the septic system. The system has been used seasonally. There was a statement that the system would be inspected, but because there was not going to be a change of use, we would have no way of following up on making sure the inspection was carried out and what the results were. The case law shows cases in other jurisdictions. The court differentiated between motel units and dwelling units and held that the town could make that distinction. That is applicable here. (He read from the court documents on page 22 to make his point.) It is important to remember that if the PB's decision stands, we will not have any oversight into these conversions. They would be unregulated, allowed on matter of right. We have a very specific definition. The type of use that is permissible in this district is a motel, not a dwelling unit. If there was going to be a multi-family dwelling unit, it would have to be 8 units?

B. Zurhellen: Are you talking about apartments?

E. MacLeish: Yes.

B. Zurhellen: Not that I would encourage you to say that word, but for me, that is a change from motel use to apartments.

E. MacLeish: I don't think it is, apartments have kitchens. You could analogize to a boarding house, I guess.

B. Zurhellen: There is a community kitchen.

E. MacLeish: There are definitions of a dwelling unit, and I believe it has to have a kitchen.

B. Zurhellen: Motels can have kitchens. My concern they could add kitchens to the units.

E. MacLeish: Yes, they potentially could.

B. Maloney: Our definition of dwelling units excludes motels.

E. MacLeish: There is a State definition that the PB used in the hearing. That definition is not needed because we have a definition in our ordinances which govern. There is a section that says that these types of facilities can accommodate people up to a month, here it is going to be longer. We have a more restrictive definition. It is a dangerous precedent for the Town and is not consistent with our ordinance. These are like apartments, but certainly not motel units.

B. Zurhellen: Is there a definition of hotel?

E. MacLeish: No.

B. Zurhellen: Motel stands for motor hotel. Theoretically, the regulations as to what you could do in a hotel, would stand. There are motels that have kitchenettes, there are motels that have 2 beds. Motels have to adhere to regulations specific to hotel use. Once you convert it to long term lease, they are living there, which is a different concept.

E. MacLeish: Agreed. I don't know if the State would accept the change of use. I believe the deal with the Waldrip's has fallen through. But this is not a mute issue. It sets a dangerous precedent that other motel units can convert and by-pass the Town completely. I think there was a mistake made by the PB.

B. Maloney: Are there any comments from the public? Bob, are you going to speak for yourself or the PB?

B. Snelling: The PB. This is a complex issue that is bringing up a concept that we haven't faced before. We are bound by existing definitions and accepted common perceptions. The minutes of the meeting do not reflect the full scope of what was discussed at the meeting. It does raise some questions about the future, it is not enough to vacate our decision and then what? How would we handle the next similar thing that comes along? I agree that the common definition of a motel is rental by the day or a week, maybe a month. But you can't find any legal restriction that prevents a motel for renting for any length of time they wish. There are examples (construction projects) where a company will come in and rent a suite of rooms for workers for a month or two. There is no legal basis to say you can only rent for a month. The business model chases the short-term rental. More importantly, our zoning is much broader than "what is a motel". What is allowed in the general residential district is lodging. Lodging can be motels, rental cottages, a rooming house, a boarding house, etc. Then the definition of transient, students at PSU stay for a semester. Is that transient? It is not permanent. We get wrapped up in ambiguous terms. Zoning allows lodging, and lodging can be any of those things. In retrospect, it may have made more sense if this conversion fit a rooming house more than it fits the definition of a motel. The use is still the same, it is lodging. If you accept that lodging of all kinds is allowed in that zoning district, the motel is a rooming house. The use is lodging. A good deal of the discussion focused on management and concern over what kinds of people are going to be attracted to this facility and what kind of oversight is there going to be. Typically, there is someone there all the time, checking people in and out, cleaning the rooms, you know what is going on. Typically, in an apartment, there generally isn't somebody there. Questions that were asked included if there was going to be a manager on site, how is this place going to be run? We didn't get good answers. That is not a zoning issue, that is a management issue. The zoning issue is, is this a legal use, is lodging a legal use?

B. Zurhellen: The difference is in the examples that you use, the student at PSU, they have a permanent address which is not that place. Transient means that you come from somewhere and you are going somewhere. They have a permanent residence that is not there.

B. Snelling: When I was a graduate student, my address was the rooming house. Undergraduate students meet your comments, but not graduate students. I have some definitions that say that lodging is a place to live temporarily.

B. Maloney: I'm hung up on the word transient. The definitions are a short-term stay. Is that 6 months? We don't define it. We don't even define transient. I think the PB and ZBA are going to have to bring something to the annual meeting specifically on that issue.

B. Snelling: What do we define it for? For a motel, the expectation is days and weeks. I would also argue, the definition for a boarding house could be a semester.

B. Maloney: I own a boarding house. We don't have leases, people rent by the week. The boarding house is transient.

B. Snelling: Can they stay for 3 months if they want?

B. Snelling: On a week-to-week basis, yes.

B. Zurhellen: So, renew every week.

B. Maloney: Yes, they renew every week. An example is someone who works locally, but lives somewhere else and goes home for the weekend.

B. Snelling: What if they want to pay by the month?

B. Maloney: We don't allow it?

B. Snelling: In the context of that, transient takes on a different meaning.

B. Waldrip: All of this talk about transient, that was a mistake in the presentation before the PB. We didn't write that. That was the buyer and what he thought he could do with the property. He rescinded his offer. All of this discussion questioning what the property is, it is a motel. If the application of these fears is going to be applied, then let's talk to the White Oak, the Boulders, the Black Horse, and put them out of business. This motel has been in existence for 24 years. We've had no problem. For people to get into our business and who is going to check the room and check the septic system, we do the septic system. We just had it checked, not because they wanted us to but because we wanted it done. All of this about transient is a mistake. It is short-term rentals. I have been approached by traveling nurses and physicians who stay at over 300 motels. It is for short-term rentals for them to do whatever they do. Americorps does this while they have a project. The typically rental time is 30-90 days. It could be 3 weeks; it could be a week.

B. Zurhellen: What was the original application for?

A. Francesco: The original application was to convert the motel from short-term to long-term rentals. Ms. Scott's definition of long-term rentals was at least a month, ideally 6 months, or up to a year or so.

B. Maloney: That was her definition.

A. Francesco: We had no site plan; we had no visual to see what was going to be converted. The entire conversation included, we could do this, or we could do that? The discussion was, a motel can be rented on a month-to-month basis, this is a motel, there is no change. We very specifically went through the details of, if you are intending to rent these as studio apartment dwelling units you need to come back for

site plan review, you need to apply to have added kitchens, septic has to be gone through. If you are talking about converting this to year-round use, there needs to be a discussion on that.

B. Maloney: What was your position on year-round use?

B. Snelling: As opposed to closing down over the winter. Now it is seasonal.

B. Zurhellen: Is it defined as a seasonal unit?

B. Snelling: No. There is no change of use.

A. Francesco: Correct, they weren't coming for a seasonal conversion. It is already insulated. For 24 years, they ran it in the summer. What we found was that people were not going to change how they were using the motel. The State of New Hampshire doesn't have a definition for whether or not you can use a motel as a residence or to establish residency in a town. We can't discuss that. By the time we came to our conclusion, given no physical changes to the building, the fact that they're going to change their method of doing business did not pertain to us. Now, when they come and talk about converting the restaurant into a boarding house kitchen, the State of New Hampshire says that a boarding house guest is limited to 90 days and cannot be residents.

B. Waldrip: I'm not sure why we're having this discussion. It was the buyer's ideas. That's gone. It's a motel.

B. Maloney: Our concern is what might be proposed in the future. We might get a proposal from a new buyer identical from what you were given and we'd have to go through all of this all over again.

B. Waldrip: I thought it would be presented to you in that form.

B. Maloney: Exactly, would it go to planning first?

B. Waldrip: No. It isn't a PB issue, zoning first, then to PB.

B. Maloney: Are you suggesting they went to the wrong board?

B. Waldrip: That's exactly right.

B. Maloney: I'm hung up on the word transient. A motel is a motel. I don't see a motel as a long-term rental.

B. Waldrip: We all know that the White Oak was sold and be converted into a memorial park for Betsy. They are not tearing down the 12 motel units and it is to be used for interim housing for the Science Center and so forth. Why can't we?

B. Maloney: We are not going there tonight. You would not object to the petitioners that it stays a motel? That is not to be allowed for long-term rentals.

B. Zurhellen: I'm confused. If it's dead, why are we having an appeal?

E. MacLeish: Two reasons. First, the decision of the PB to reject the application is something that others could rely upon in making the determination of turning their motel into long-term housing.

B. Zurhellen: We're talking about trying to set rules for the town.

E. MacLeish: No, we have to talk about the application.

B. Zurhellen: Who made the appeal?

E. MacLeish: I did.

B. Maloney: He's appealing about the decision. He's asking the ZBA to overturn the decision.

B. Zurhellen: What was the decision of the PB?

E. MacLeish read the motion again.

B. Maloney: They viewed it as no change in usage.

K. Fuller: If it is not a motel, how is it classified? What is it called?

E. MacLeish: I would say it is a combination of hotel and apartment.

B. Snelling: If we create a definition for this new entity, are we going to allow them?

B. Maloney: Don't know yet, that is a separate issue

B. Snelling: This exercise is a waste of time. What we need to do is get our heads together to create a meaningful definition to this new entity, what boundaries are associated with it, in terms of length of stay and so on. And then, what are we going to do with it, are we going to allow it. This conversation sounds like we are going to allow it.

B. Maloney: That may be the case. I think we have an obligation to Bill to make sure he knows who he can sell to and what it can be used for. Basically, his buyer could not do what he wanted to do under our current zoning reg's.

B. Snelling: It is the opposite. The PB said that there is no justification under our current zoning to not allow what that proposal was; to go ahead. There was no legal limitation on how long people could stay.

B. Maloney: I think there may well be with the word transient. We are dealing with opinion.

B. Zurhellen: I think we need to have definitions. To me, motel means that people have a different address, they come, they stay and they leave. Long-term rental means you are converting it to an apartment. Even if it has no kitchen, you are converting it to an apartment.

B. Snelling: We have a legal definition of an apartment.

B. Maloney: We are not arguing that. We have an issue that has to be addressed. It will be up to the PB or ZBA to address it and present it for Town vote. I see making a decision tonight that would anticipate what could take place in the future. If I had to vote right now, I would vote against the PB.

B. Snelling: If that buyer was still interested or a new buyer proposed a similar thing, our current regulations don't (didn't finish statement).

B. Zurhellen: I would make a motion that this zoning board take this under advisement to get a legal definition so that we could resolve this matter.

B. Maloney: I think that is a good idea.

A. Francesco: If this appeal goes through and the PB decision is overturned, that means that we no longer deny this and our determination was reversed and if anything else needed to change on the property (interrupted by B. Zurhellen)

B. Zurhellen: A new presentation, a new set of decisions and that would give up time.

B. Falby: I am on here on behalf of the White Oak Pond Watershed Association. This came up at our board meeting. The position is in favor to vacate the PB decision. Our concern is the septic because it is in the watershed. I understand that it was designed for year-round use, but hasn't been used in that manner. There may be an impact on the pond. I took a look at the Statute that the PB cited at the meeting. I agree that transient's common-sense definition is someone passing through, a temporary occupant. There was a state definition that doesn't define transient, but defines motel – "all types of establishments offering accommodations for rent either by the day, week or month or any portion thereof".

B. Maloney: It says, any portion thereof, meaning day, week or month. It doesn't say day, week, month or year. It may not define transient, but it does flow to the definition that most of us think as common sense.

B. Falby: It is consistent with the common-sense definition. I searched for court case that define motels. There is an interesting case where the issue was a deed restriction against overnight cottages for a short period of time. Someone tried to get around it by proposing a motel. The NH Supreme Court looked at whether a motel was equivalent to an overnight cottage. The reason I thought it would be helpful is because they defined what they thought a motel was. They said "a motel can be reasonably considered to be a building which merely furnishes the transient guests with sleeping quarters and bath and toilet facilities with linen service and a place to park his car. These are likewise the essential characteristics of overnight cabins." So, this description is entirely consistent with the definition in our zoning ordinance. He read the definition. The applicant was upfront that this was new and different – short-term to long-term. The reason that it is such a quandary is that it is not an apartment house, it is not a motel, it is something in between. Ms. Scott described it explicitly that way in the minutes when she said, "we're looking to make the Yankee Trails Motel into an Apartel, something in between long-term rentals. It is different than what we do already. We'd like to see people in there for 6 months to a year at least. There will be a lease agreement. Everybody will sign a lease." This is not a motel; this is not for transients. This is for people who are going to live there not passing through to somewhere else, not with a permanent home elsewhere, but are treating this as their residence. It is clearly not permitted under the definition of motel, lodging, bed and breakfast, which is the permitted use. The way I read the zoning ordinance, this not a permitted use within a general residential zoning district. It would require a site plan review by the PB. They should have applied here for a variance to allow them a non-permitted use because it's a brand-new use that doesn't fall within the definition of anything permitted from section 300.4.9. of what defines a general residential district.

E. MacLeish: You could get legal counsel on this, but I don't think you need to. We can deal with all kinds of hypotheticals; we don't have to define every word that is in our zoning ordinance. All we have to do is apply a common sense definition of a transient stay; it is a short-term stay, not a long-term stay. This case should have been over as soon as Ms. Scott said that we are interested in transients, we're interested in longer term rentals. I don't see how a reversal made by the PB is going to be offensive to anybody. Neither the PB or the Waldrip's are harmed by that.

B. Waldrip: We had a contract on the place. This is what he wanted to do with it. This gal came to the Town offices and somebody told her that she had to go before the PB to get permission to do whatever their plan was. The plan failed. It opened up a can of worms and we still don't have a contract. We have a motel and it looks to me that now we have to have permission of the Town to run our motel.

B. Falby: The danger of leaving the PB decision the way it is, is that the Boulders could sell to someone who wants to turn it into Apartel's and they could justifiably rely on the decision of the PB and as long as month-to-month residency is offered, it remains a motel. They would have a law suit against the Town saying they have a PB decision that authorizes this and we're entitled to do it.

B. Snelling: Counsel has indicated that the decision of the PB does not constitute precedent for later proposals. If later proposals came in the Selectmen would be able to challenge that decision and raise it with the ZBA. We need to come up with a new definition that is a strange mix of dwelling and motel.

B. Zurhellen: The question to me is, do we overturn it or don't we overturn it?

B. Falby: I disagree. We have a PB decision that is appealed and not vacated, it stands and represents the PB.

MOTION: "To vacate the decision."

Motion: B. Zurhellen

Second: J. Ruhm

Discussion: None

Motion Passed: 4 – Yes, 0 – No, 0 – Absent, 1 - Abstain

B. Maloney: This issue will be worked on by B. Snelling, E. MacLeish, B. Falby, B. Maloney.

B. Snelling: Asked E. MacLeish and B. Falby to begin working on the definition. They agreed.

ADJOURNMENT:

At 7:52 P.M. the following motion was made:

MOTION: "To adjourn."

Motion: K. Fuller

Second: J. Ruhm

Discussion: None

Motion Passed: 5 – Yes, 0 – No, 0 – Absent

Respectfully submitted,

Linda Levy
Land Use Boards Assistant