GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 25, 2022

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, January 25, 2022, at 7:00 p.m. The public, the applicant, and Board members were able to join via GoToMeeting.

Chairman Bill Knightly led the Pledge of Allegiance.

Members present were Chairman Bill Knightly, Vice-Chairman Larry Routhier, Regular member Scott Davis, and Alternate members Kevin Hayes and Richard Grenier.

Members absent were Regular members Adrianna Antonopoulos and Andrew Howe.

Also, present were Sandra Hart, Technical Assistant; John Ayer, Director of Planning and Land Use; Norman Skantze, Deputy Code Enforcement Officer; Eric Maher (on GoToMeeting), Town Attorney with Donahue, Tucker & Ciandella representing the Board of Adjustment; and Joseph Driscoll, Town Attorney with Mitchell Municipal Group representing the Board of Selectmen.

B. Knightly appointed R. Grenier to stand in for A. Howe.

B. Knightly asked if everyone could come to the front and state their name before starting their presentation.

**1. Applications**

**1.1 MG Holdings, LLC**

 **Application #2021000525** - Applicant is seeking a Variance from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25% to allow construction of a house on property located at 69 White Birch Drive on Tax Map & Lot #253-366.000 in the Single Family Residential (SFR) Zone. *Tabled from the December 28, 2021 meeting.*

**1.2 MG Holdings, LLC**

 **Application #2021000526** - Applicant is seeking Variances from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25%, and from Article 5, Section 5.1.3 to allow construction of a house within the front setback, on property located at 77 White Birch Drive on Tax Map & Lot #253-365.000 in the Single Family Residential (SFR) Zone. *Tabled from the December 28, 2021 meeting.*

**1.3 MG Holdings, LLC**

 **Application #2021000527** - Applicant is seeking a Variance from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25% on property located at 94 Sagamore Road on Tax Map & Lot #252-143.000 in the Single Family Residential (SFR) Zone. *Tabled from the December 28, 2021 meeting.*

Motion made by L. Routhier, seconded by K. Hayes, to take application numbers 2021000525, 2021000526, and 2021000527 for MG Holdings, LLC, off the table. Motion carried with all in favor.

B. Knightly stated that a letter had been submitted by Attorney Brett Allard of Bernstein Shur requesting that the applications be tabled to the next meeting.

Motion made by L. Routhier, seconded by K. Hayes, to table application numbers 2021000525, 2021000526, and 2021000527 for MG Holdings, LLC, to the February 22, 2022 meeting. Motion carried with all in favor.

K. Hayes recused himself from the following application.

**1.4 Elizabeth Sullivan**

 **Application # 2021000744** – Appeal of an Administrative Decision regarding a Notice of Violation issued by the Deputy Code Enforcement Officer dated September 21, 2021 regarding 63 Sand Hill Road on Tax Map & Lot #209-007.100 in the Limited Residential (LR) Zone. *Tabled from the December 28, 2021 meeting.*

Motion made by L. Routhier, seconded by S. Davis, to take the application off the table. Motion carried with all in favor.

B. Knightly stated that they only have a four-member board present. Ethan Wood stated that their preference would be for a five-member board, but that they would proceed with the four members present.

Ethan Wood, Attorney at Normandin, Cheney & O’Neil, PLLC, stated that he was present for this application and that the property owner, Elizabeth Sullivan, was also present, and noted that she goes by Betsy. He stated that his client received a letter dated August 10, 2021 from the Deputy Code Enforcement Officer, Norman Skantze, alleging a number of violations at 63 Sand Hill Road. He said they have provided pictures of the property showing current conditions.

E. Wood said that as an initial point under violation #7 a. & b., his clients do acknowledge that the fence/screen buffer was built without a building permit and without Planning Board approval. He said his clients will remove those fences promptly unless the board would be amendable to waiting until the snow melts. If not he said they can remove them within one week. B. Knightly said that they should check with the building inspector and work with him on the fence. E. Wood said that whatever N. Skantze decides is fine as to the removal of the fence.

With regard to violation #1 as to Non-Residential Site Plan, Article 13, (including the operation of a commercial boat business), E. Wood said that it isn’t clear as to what is the violation. He said the boats are owned by the property owner and her spouse. The spouse is not a property owner, but he does live there. He said they aren’t clear as what is meant in the letter by the commercial boat business. He read the first paragraph under Article 13. E. Wood said to the extent that there is an allegation that his client has a boat business, they are not operating one on site, so they aren’t subject to the provisions of Article 13. They aren’t storing other peoples’ boats, nor working on other peoples’ boats, they are only storing some of their own boats.

S. Davis asked if they could verify that by showing registrations for those boats. E. Wood said absolutely they could. S. Davis said that it would be a way to clarify that it’s not a commercial operation. E. Wood said they would have registrations, but his client is in the middle of building a barge, but the barge is not for commercial or industrial use. S. Davis asked what you would build a barge for. E. Wood said that they were planning to buy a piece of property on an island that did not have a dock. They tried to find someone to build a dock and did not have any luck. So, in order to have a dock they would need to build a dock and to build the dock he needed to have a barge. S. Davis thought they would have to register it somehow in order to put it on the lake. E. Wood noted that the barge is not lake-worthy at this time.

E. Wood stated that E. Sullivan said that her husband, Jamie Merriam, has never sold a boat in his life and that they are happy to provide titles of what is on the property. With the exception of that, they are unclear on what other criteria would be called into question in Article 13.

E. Wood went on to violation #2 regarding the industrial use of property as a construction yard in the Limited Residential Zone without a variance. He said they dispute the characterization of it as to a construction yard. What they have on the property is for personal use. Construction yard would imply that it’s some sort of commercial or industrial operation. He said his clients may do other work, but not on the property. No activities on the property are commercial.

The definition of a construction yard is a business activity that includes the storage of materials or merchandise or equipment. He read the definition for everyone. He said at no point has his client engaged in business activity on this site. He is not storing, renting it, or selling it. The characterization of a construction yard may not be accurate. E. Wood noted that the pictures that his client submitted show no activity going on there at this time.

R. Grenier said that the definition ends with “etc.”. He said he is looking at the picture showing the forklift in the driveway. E. Wood said they will use that forklift for the barge that he’s currently building. E. Wood said that while they acknowledge the vehicle on site is a commercial type vehicle, it’s use is not a commercial type activity. R. Grenier said that the passer-by may think differently as to what is going on there. E. Wood stated that they are aware that appearances are relevant in the matter. He said they don’t think that violation #2 specifically qualifies as an accurate depiction as to what is going on, even though they have material used for construction yard, they don’t use them for construction.

S. Davis referred to violation #2 Construction Yard, and read Section 4.7.4 Industrial Uses. He said in a residential area, construction of a barge, in his view, has the potential to be perceived as that type of work, even if E. Wood’s client says that is not the work there. He asked what needs to happen in order to build a barge. He said if this were a neighbor in his neighborhood, it would be a nuisance in his opinion. S. Davis said that this Industrial Use definition gets into more depth than the Construction Yard definition. He said that he’s not debating or denying that the client says that this is for personal use. He said he can understand the concern noting that he repairs his own boat on his own property, but S. Davis also said that a barge is much larger.

E. Wood said that he gets the point. One runs a risk of creating a nuisance and he can see that and that’s a valid concern. The question that he had is while the activity itself is not illegal, what if it was in a barn large enough for this – would that be more amenable to the Town? S. Davis said that this was brought to the Code Enforcement Officer’s attention.

E. Wood said that yes, it was the neighbors who were unhappy with the sight and the sounds, and they contacted the Town. We are trying to be good neighbors and a barn is potentially something to consider.

S. Davis said that he could see the neighbor’s perceptions on this.

E. Wood said that he wasn’t here to argue the perceptions and he understands the neighbor’s point of view. He said he can understand the issues with his clients and running their primary business on the lake.

R. Grenier said that if he’s building the barge to build a dock, what is going to happen with the barge after. E. Wood replied that he didn’t know. The intention was to build the barge for a dock on an island that did not have a dock, but the purchase & sale did not go through. R. Grenier asked how big the barge is and will it be completed? E. Sullivan replied that it’s 12’x 36’ and 4’ deep, but he hasn’t worked on it in a year and a ½. He only worked on the trailer this summer. She said they have invested a lot in material and labor, but haven’t had time to work on the barge.

E. Maher said that he just heard E. Wood’s client say that they invested a lot of material and labor in the construction of the barge, but he heard someone say that they had difficulty finding someone to build the dock. He asked where they got the labor. E. Wood replied that it was her husband who is a welder and has a background in building structures in the water and on the water. He said his background prior to the current business was construction. E. Maher asked if J. Merriam is building this singlehandedly. E. Wood said he is. He also said that Mr. Merriam’s son’s friends and his own friends come over to help with the forklift, but Mr. Merriam is the only one doing the welding.

E. Wood went on to violation #3 regarding commercial use of the property for Auto and Marine Light Repair garage. He said there is no commercial use. They aren’t selling, they aren’t buying, and they aren’t storing anything for income. E. Wood said they acknowledge that the way the property has been used would give that appearance. He said we are really talking about a limited number of times where it did occur, and it was not an everyday occurrence. The activities that are occurring aren’t commercial, but personal.

S. Davis said so there is no form of any payment with regard to any boats or vehicles on the property. E. Wood said that is correct.

E. Wood said that the people who put up the fence were paid, but the ones using the forklift were not.

Also, there is an ambulance out of commission that his son was going to use to run a business, but did not actually operate the business. He said it is registered and he’s back at school now.

E. Sullivan stated that they have two boats and one of the boats was totaled.

E. Maher said to E. Sullivan that she mentioned that she and her husband operate a business on Lake Winnipesaukee. E. Wood stated that it is a restaurant on the lake. E. Maher asked what a restaurant on the lake is. E. Wood said that it is a restaurant that operates on a boat and it is called The Dive, which has generated its own share of controversy. E. Maher asked what happens with the trash from the business. E. Sullivan said that it goes to the City of Laconia dump station.

L. Routhier asked about the dimensions of The Dive. E. Sullivan replied that it is 22’ x 70’ and 70 tons, so it’s much larger than the structure/barge that is on the property. E. Wood said that it’s not on this property. E. Sullivan said that it doesn’t go on the road legally.

E. Wood noted for the record that while The Dive’s corporate office is listed as being located at their home, that’s for bookkeeping and office work. No trash is brought to the home from The Dive.

S. Davis said that corporate office does require some sort of approval. J. Ayer said that it could be a home office, which he explained noting that no approvals are required for a qualifying home office.

S. Davis asked if they have any interaction with any customers at this corporate home office. E. Sullivan said they have a corporate office in another location.

E. Wood moved on to violation #6 regarding nuisances, trash, and commercial dumpster stored on site. E. Wood said that the Town of Gilford does not offer trash collection services, and with six kids and two adults living in the house, there is a need for having a dumpster on site. E. Wood said that nevertheless, they removed the dumpster after receiving the letter. E. Wood stated that there is nothing to prohibit them from having a dumpster as long as it is placed outside of the setbacks. He added that they had someone go to the Gilford recycle center and they were turned away saying that they don’t accept commercial trash at that location.

R. Grenier asked how they determined that the trash was commercial at the transfer station. E. Wood said that he can’t speak on that, but he could say that The Dive’s trash is taken by an entity in Laconia. E. Sullivan said that they didn’t inspect the trash, but it was their own personal trash in The Dive’s truck and a friend had taken it there for them. R. Grenier said so they didn’t inspect the trash and they didn’t take the trash. E. Sullivan said that is correct.

E. Wood said that they do pay a significant amount of money for someone to pick up the trash in Laconia.

E. Maher said that E. Wood said they have a contract for trash removal with Laconia. E. Wood explained that the contract is with a trash removal service in Laconia, not the City of Laconia. E. Maher asked if they had a contract. E. Wood said that he will ask his client but he is concerned that sharing that information could become subject to RSA 91.a, which may breach contract terms with the carrier. E. Maher said that historically we’ve shared those sorts of things between legal counsels to avoid that going out into the public, but it would be up to the board.

S. Davis said that invoices or payments made to a trash company would be evidence. E. Maher said an invoice would be satisfactory. E. Wood said that he would be happy to talk to his client about it. B. Knightly said whatever E. Wood and E. Maher want to work out is fine. E. Wood said that six kids do generate a fair amount of trash.

J. Ayer said that you mentioned that there is no trash “routinely” picked up or no deliveries “routinely” made. He asked if there are any that happen which are not routine. E. Sullivan said there are not.

L. Routhier asked if there was a limit to the number of boats they can have on the property even if they are their own boats. J. Ayer said that there isn’t a limit on the number of boats one may have on a lot, but Section 6.6 Unlicensed and Commercial Vehicles, might come into play, which he read for everyone.

E. Wood said that it sounds to him that they might solve some of these issues by building a barn or something to store some of these things.

E. Maher said that you had mentioned that the barge is being constructed when The Dive isn’t in operation. E. Wood said that is correct but said that his client noted they haven’t been working on the barge, they’ve been building a trailer. He said J. Merriam eventually has time to work on the barge he may do so, but he’s not actively working on it.

E. Maher asked if there have been any other employees of The Dive who have gone over there to help make repairs or anything related to the activities we are discussing. E. Wood replied that there have been employees but they were building the fence, which is not related to The Dive. They do have jobs as The Dive employees, but not at the time they were constructing the fence.

E. Maher asked who paid them. E. Wood replied that they were paid out of personal funds. E. Sullivan said that they had been paid with cash.

Joe Driscoll of Mitchell Municipal Group stated that he was here representing the Board of Selectmen and the administrative appeal action of Deputy Code Enforcement Officer, Norman Skantze. He said that what’s been appealed is citing violations that occurred in August. N. Skantze is also present and he has been talking to the property owners, doing inspections, and taking photos and videos. For clarity, and as you can see from the notice, it lists The Dive as an LLC and that is a business and that is the corporate headquarters address. This violation notice was an attempt to be thorough, as well as in seeing some potential crossover. This is an operation, and that’s been admitted, so we don’t need to get into that.

Driscoll said that a housekeeping question related to violation #7 with regard to the fence. They said that they will be removing the fence, but it’s still a violation. B. Knightly said that they would need to contact the Planning Office to work out a suitable agreement. E. Wood said that they admit the location of the fence is in violation. With that said, I think we would just remove it at this time and if we decide to do something else, we will contact the Planning Department. J. Ayer said it was also erected without a building permit.

J. Driscoll said the board has a notice of violation and an appeal in front of them. He asks were the interpretations correct? He said at he would like to have N. Skantze present the information.

N. Skantze said that the initial complaints actually came in before he came to work for the town and were received by the previous code enforcement officer. He stated that this is a single family home with an address of 63 Sand Hill Road built in 2001 on a two-acre parcel in the Limited Residential Zone having 150 feet of frontage on Cotton Hill Road as well, along which frontage they do have a permitted driveway.

N. Skantze said that August 3, 2021 was the first time he responded to 63 Sand Hill Road, and what he observed was a dump truck or something out there being washed. He said the entire property cannot be seen from the road and that he has never been on the property itself. On August 10th he met with one of the abutters, Virginia Canning, who happens to be one of complainants. He said there were numerous complaints before he worked for the Town, and the complaints continued to come in after he started working here. N. Skantze said V. Canning advised him that when she purchased her home across the street on Cotton Hill Road there was no sign of anything happening on the Sullivan property.

N. Skantze said that he also has pictures and a video which he will ask J. Ayer to show later in the meeting. He said an additional and anonymous letter came in from other neighbors as well. The letter alleges many things, including adding fill to the parcel in wetlands. N. Skantze stated that he had driven by the property numerous times and that he took several photos showing what appears to be commercial activities. There were multiple vehicles, multiple people, the dumpster, and there was work being done. He said in September he reviewed an additional complaint.

N. Skantze said that at his request he set up a meeting on August 26, 2021 with E. Sullivan and the intent of the meeting was to discuss removing junk and he explained the discussion of the meeting. During the meeting E. Sullivan told N. Skantze that they had two boats 20 feet in length and that they were for personal use. He discussed his concerns with her during that time and explained to her that she would have to convince the town that these were not violations. He stated that he offered her the opportunity to submit a written agreement (copied in the packet distributed to board members) but later E. Sullivan contacted him stating that they had contacted an attorney and would no longer be going forward with the agreement that had been discussed.

N. Skantze said that on September 21, 2021 the town issued a notice of violation. The notice alleged the property was being used in violation of the Zoning Ordinance.

N. Skantze said that he had other letters as evidence, which he can read or give to the board. E. Wood said that he would object to any anonymous letters being read. J. Driscoll said that the letters should be admitted. There’s no constitutional confrontation clause that is indicated in these proceedings and we would like to simply provide the evidence. N. Skantze said that it’s one piece of evidence that was provided to the town. E. Mayer said that it’s within the board’s discretion whether to allow it. He suggested overruling the objection and consider it as part of the evidence.

R. Grenier said that he didn’t think that the board should accept anonymous letters. He said he understands that those were submitted for the start of an investigation, but he was more interested in the town’s evidence. The members agreed. B. Knightly asked N. Skantze to read only the letters that weren’t anonymous.

N. Skantze read the letter from Virginia Canning of 212 Cotton Hill Road, one of the abutters, for the record. J. Ayer showed on the monitor pictures of 63 Sand Hill Road which were presented and explained by N. Skantze. During the presentation the board took a five-minute recess to restart the computer which had frozen up. N. Skantze said that the house is located at the northerly end of the lot close to Sand Hill Road and the area shown in the pictures is along the lot’s Cotton Hill Road frontage. He said the owners say this is just a hobby, but based on his observations he doesn’t agree with that.

N. Skantze said that different people within the neighborhood called in to complain and he explained what he witnessed as the summer progressed and as the activities on the site transpired. He stated that one of the best pieces of evidence was a video from the neighborhood which he did not take, and he presented the video.

L. Routhier asked how many times per week the garbage truck went to the site to empty the dumpster. No one knew the answer.

N. Skantze said that the bottom line is that we received multiple complaints within the Department of Planning and Land Use and we felt that they were legitimate complaints and violations. N. Skantze said that the violations haven’t changed, but E. Sullivan has worked to clean up the site. He said site cleanup has not included resolving some of the more significant violations so far such as the fence that was put up without a permit, the barge, and the business operation. He said the dumpster was there in the summer, but if it was needed by the family then, he asked how they are dealing with trash currently.

J. Driscoll said that he would like to review each of the violations themselves to show what the board has seen substantiated. He said beginning with violation #2 as it relates to industrial use of the property as a construction yard in the LR Zone. He said importantly there is no definition of industrial in terms of the label for the use. He said when you look at Industrial uses, you then see what these things are, as was read earlier. The key points are the items that we saw on the property such as the forklift. This has been described as a hobby use, but there is no hobby exception to this. If someone is conducting an industrial use or commercial use, well that’s what it is. The argument has been made that this is a business activity in that the site is used as a construction yard. He would ask that the board not limit its review to something like that. He pointed out a recent New Hampshire Supreme Court decision in the case of Town of Lincoln v. Joseph Chenard, case No. 2020-0316, which he went over for everyone. The term “business” came up and the court used a definition of business from the dictionary as being an action which occupies time and demands attention and effort. In looking at the term “business”, it’s someone going about the business, not necessarily a transaction that happens. In using that type of definition, the Supreme Court upheld that decision that the property was being used inappropriately

J. Driscoll said the board has seen the pictures and the video with the hull, multiple boats, trailers, and vehicles. To say that this is a hobby or a typical use of a residence here in town, it doesn’t line up. For somebody in Mr. Skantze’s position he’s viewing the actions that are occurring on the property and he is using his judgment and making determinations based on the facts available to him and what he sees.

J. Driscoll said violation #4 was not discussed earlier by the applicant, and pointed out that they moved from violation #3 to #5. He said he would like to deal with #3 and #4 together. He said he would like to do that because it deals with the Commercial Use of Auto & Marine Light Repair Shop, but also the Industrial Use of Auto, Marine & Truck Repair Garage, which are similar uses. J. Driscoll read Automotive & Marine Light Repair Shop use in Section 4.7.3(c). He said the use of the word “business” is there, but he encouraged the board to use what the Supreme Court has used in the definition of “business”. J. Driscoll also read the Automotive, Marine & Truck Repair Garage use in Section 4.7.4(a). He said this is the more intense Industrial Use aspect of auto and marine repair garages. He said please note that this definition does not require any sort of business activity or a transactional element to it. He said the board saw the video.

J. Driscoll said additionally, under violation #4, Construction Yard is also a type of Industrial Use. He said the category includes Industrial Uses in Section 4.7.4(c) which includes metal fabrication, pipe manufacturing, etc., and metal fabrication is what is occurring here.

J. Driscoll said violation #5 refers to the Industrial Use of Boat Storage. In the Limited Residential Zone boat storage is not a permitted use. J. Driscoll read the definition of boat storage and added that is what we are saying is happening here. He said there was a statement made that these boats are registered to the applicant, but that information has not been provided. What we do have is visual evidence.

J. Driscoll moved to violation #6 regarding a nuisance and read Section 6.2 of the Zoning Ordinance. He said that the board has seen that this is also occurring. He said the board has photo and video evidence of this, and it has neighbors objecting to what is occurring here. He said there are trash bags and there is excessive noise, there is work going on that falls into this category. He said that this violation is satisfied.

J. Driscoll circled back to violation #1, which requires non-residential site plan approval under Article 13. He said we’ve shown various commercial uses being conducted at this property which necessitate site plan approval, but there is no site plan approval and there are no variances here. He said therefore this violation is also affirmed. He said we have seen the violation, we have seen that the definition is satisfied, and the applicant has not obtained the site plan approval that is necessary.

E. Maher said he would like to understand J. Driscoll’s position/the Board of Selectmen’s position a little bit better. He asked if it is the Selectmen’s position that the activities that are occurring on the site do not need to have a commercial element to them in order to constitute industrial uses under the Zoning Ordinance? J. Driscoll replied that their position is that there are multiple violations, and the definitions as listed in Article 4 include these uses that are being conducted. E. Maher asked what would be the difference between this use or someone fixing their own boat on their own property for personal purposes? J. Driscoll said he thinks there may be an issue with interpretation and that’s where discretion comes into play when it comes to enforcement.

J. Driscoll said that the Deputy Code Enforcement Officer saw fit, based on the complaints, that these violations were occurring. He said N. Skantze determined, on behalf of the Board of Selectmen, that the Town should act on these things. He said enforcement is inherently discretionary and involves these types of decisions. He said that decision was made and enforcement was pursued.

E. Maher said that the Zoning Board is looking at this notice of violation and they are responsible for applying the facts to the law in this instance so it’s not so much a discretionary issue. J. Driscoll responded that he agrees 100%. This board is doing its review based on the information they are provided, such as the evidence of what was occurring on the property that precipitated this violation notice. J. Driscoll said they have the video, photos, testimony, and other evidence that has been provided and all of the elements of the definitions were satisfied. He said this notice is regarding 63 Sand Hill Road, regarding definitions provided in the ordinance, and regarding evidence that supports that.

E. Maher said that if a term isn’t defined in the ordinance, should we be looking elsewhere, such as a dictionary, or would we be looking solely to the terms of the Zoning Ordinance? J. Driscoll responded that we should be looking at terms in the Zoning Ordinance because there isn’t ambiguity there, and the Industrial Uses section has a list of uses that qualify. He said the Town has a permissive Zoning Ordinance so if it’s not listed in the Zoning Ordinance, the use cannot be done, so whatever is in there is the definition for Industrial Uses. He said the town meeting could have seen fit to have put that in to clarify things, but they did not and that would be a decision for the board to add words that aren’t there. E. Maher said either that or we could rely on the ordinary accepted meanings.

E. Wood said he would like to address the pictures and the video that were shown. He wanted to start with the case that was brought up with regard to the Town of Lincoln v. Joseph Chenard. He said the thing that Attorney Driscoll neglected to bring up is that they were talking about a specific statutory definition. He said this is something that E. Maher pointed out which is not something that exists in the zoning ordinance with regard to industrial uses. He said in fact, if the board were to read the entire decision from that case, it says “the definition of business is ‘action which occupies time and demands attention and effort’ construing the evident purpose of the statute together with the broad statutory definition, we determined the word in RSA 236:111 encompasses junk yards, not operated as a commercial business”.

E. Wood reviewed what was shown in the video. E. Wood stated that the person bringing the trash to the site is actually the housekeeper and she’s bringing personal trash from the house to the dumpster. He explained that Mr. Merriam is in the background grinding the trailer that the barge was on, but you don’t see anyone else doing any sort of grinding or other work. You see two other people on the property, but neither of them is engaged in any activity other than opening the fence. There is no business activity. In this video the dumpster was not overflowing, but the lids were clearly on the dumpster and again there is nothing illegal about having a dumpster on your property. E. Wood said that it is strange that the Town is getting involved in a dispute between property owners.

R. Grenier asked about the man on the bike and who is he speaking to. E. Wood stated that it was Mr. Murphy and he was complaining to Jimmy, and he did submit a complaint. He said he does not know what the conversation was.

E. Wood stated that his clients weren’t the ones who removed the trees or received the driveway permit; that was the prior property owner. The neighbor complaining has no legal right to object to what has been done as far as the trees go on somebody else’s property.

E. Wood said that you have one video showing one day, and it’s showing the day after The Dive had ceased operation. He said we aren’t talking about the height of summer and we aren’t talking about the time period where they would be operating their primary business. Their only business is The Dive. The fact that they engage in a hobby of welding or boat repairing is again doing something because you are qualified to do it. If it makes it not a hobby then I think we will have some issues determining whether someone is using their property for a commercial purpose.

E. Wood said they note the date of the video as being September 14, 2021 and that there are days that aren’t specific in August where it was alleged that there were violations on the property. Again we don’t think that the Town has proved its case, what they have done is identified a couple of dates here and there where the neighbor was complaining. He said the applicant’s husband wasn’t at work, but instead he was working on the barge or taking apart a trailer at home. E. Wood said that what we have is from the enforcement officer’s perspective, that he felt like it was a violation, and he felt it was an industrial use, and he felt this was a commercial use, but he hasn’t proved that it is. He said they haven’t proved anything; there is no proof. He said they’ve simply said that it looks like it, so it must be.

E. Maher said that you mentioned that if there was a nuisance, that it should be a matter for a private cause of action, but doesn’t the Zoning Ordinance prohibit nuisances and authorize the town to enforce nuisance activities. E. Wood replied that he didn’t disagree with that. E. Wood said the question that he would have is actually how many times has the Town enforced that and sought some sort of court action with regard to nuisance. He said he doesn’t disagree that someone can find this a nuisance, but this is not a nuisance that is harming the Town. There is no implication that the Town has been impacted other than a general allegation that they violated a site plan or Zoning Ordinance. He said those are based specifically on the pictures and a video and representations of two people on record and Mr. Skantze saying that he went there and it looks like it, but there is no actual proof that this hits any of the criteria in the Zoning Ordinance and E. Wood said he thinks that is the thing the Zoning Board should focus on. He said just because it looks like a violation does not make it a violation and that is the critical part here.

E. Maher said that you stated that the two other men in the video with J. Merriam were not engaged in work, which leads me to the question as to why were they there? E. Wood replied that it is not a crime for them to be there and he didn’t know what they were doing there.

E. Maher asked if we could get confirmation that all they were doing was just hanging out, it looked like they were helping. E. Wood said that they were helping by opening the gate and letting the garbage truck in, which isn’t a commercial activity. The fact that they are on the property is not a violation of any Zoning Ordinance.

E. Maher said could somebody answer on what days and times the transfer station is open. R. Grenier said Tuesday through Saturday. E. Maher said in one of the pictures there was a pile of trash bags, and he asked how many trash bags were accumulated before someone could bring them to the transfer station. E. Wood said that he doesn’t know how long the trash was there, but they do have six kids there. Also, they recently moved to the property and in the process of unpacking and that generates some trash. He said that he doesn’t know if that trash was generated in one week. E. Sullivan said that it was there for one day and it’s about a week’s worth. She said they didn’t have time to make it to the transfer station, so that’s why they needed a dumpster. E. Wood said that they did have trash pickup at Sand Hill Road, but they consistently missed it in an 8-week period.

L. Routhier stated that the dumpster is gone now, so why isn’t there any trash being generated currently. E. Wood stated that he was certain that trash was being generated. E. Sullivan stated that it’s in the garage, and they try to go to the transfer station once a month because they are busy.

E. Wood stated that his clients are a little shy in using their property as they would like to after everything that has happened. He said he thinks his clients would love to have a dumpster.

R. Grenier asked to confirm that they moved there recently. E. Sullivan replied they moved there in July of 2020. R. Grenier asked about the two boats and when they were last in the water. E. Sullivan replied that one was in the water in 2020, but was ruined in a storm and one hasn’t been in the water yet, but they are working on them.

J. Driscoll asked if the board had a copy of the notice of violation. Yes, they replied.

J. Driscoll said he would like to run through a couple of quick points. He said “nuisance” is a term in the Zoning Ordinance, and it is within the Town’s purview to enforce it. The Board of Selectmen have the authority to enforce the Zoning Ordinance and that’s what they are doing. In saying that the Town hasn’t met its case, they mention nothing that we would be able to get our hands on. He said all of that information is in the control of the applicant, but they have presented the board with nothing. He said this is a publicly noticed meeting. There was no evidence brought in from the property owner. Instead, what the Town submitted was a video, pictures, and statements. J. Driscoll said to say that the Town has failed is simply not accurate. He said we have heard statements that individuals were there at the site because they were there, and they can’t speak to the trash being there. Code Enforcement is doing all they can, statements were received, they went by the property multiple times, conversations occurred, the same activities occur and nobody’s saying that this stuff didn’t happen. He said the Town is of the opinion that this constitutes a violation of the Zoning Ordinance. He said he doesn’t think that business activity means that there has to be a transaction. He said what the board has here is Industrial activities and what it sees here checks all of the boxes for these definitions. What we are simply asking is for the board to uphold the notice of violation that was issued.

B. Knightly asked if there were any further questions. Hearing none the board would like to excuse everyone to meet with counsel.

B. Knightly stated that we were back in session at 9:57 pm. The public hearing is now closed and we are now in a business session.

R. Grenier said that if he were to have his pick of the six violations, it would be the nuisance issue. He

just couldn’t envision living next to a property that has that level of activity in a residential neighborhood.

L. Routhier said that he agreed with R. Grenier, that the nuisance was supported in the argument. He’s conflicted regarding the Industrial Use. It looks like it probably was or is being used for that and there are several definitions discussed. He said the video was very persuasive in making it look like it is a Construction Yard and Industrial Use, but nonetheless it’s definitely a nuisance activity and he does agree with that aspect.

S. Davis said that he didn’t take issue with the Commercial Use of the property for Auto & Marine Light Repair Shop, or Industrial Use of the property for Auto, Marine & Truck Repair Garage, and he doesn’t see the problem or take issue with the two boats and minor automobile repairs on their own vehicles. He said he does have an issue with the construction of a barge being a hobby. The cost and everything does not justify it as a hobby project. The activity as seen in the video certainly depicts this as a Construction Yard. He said if one goes by the literal definition of Industrial Use it could overlap in there, but to him the barge is at some point going to be a commercial tool and used for commercial activity and he can’t say that it’ll be used in conjunction with The Dive operation or not. S. Davis said he questions the validity that building the barge is a hobby, and he questions the expense for a temporary dock for a piece of property that hasn’t been bought yet. He believes that the barge is a commercial construction operation to be used for a commercial use.

B. Knightly said that the Town made their case. He said that he has sat on criminal and civil juries, and the bottom line is a preponderance of evidence rather than beyond a reasonable doubt and he said he thinks that E. Wood made some cases. He said he agrees with S. Davis with the regard to the Industrial Use and the nuisance. He said there’s a lot of activity going on there, and he notes the fact that the dumpster is suddenly gone.

Motion made by L. Routhier to approve the Town’s finding. E. Mayer advised that if the board is to approve or sustain the decision of the administrative officer, it should make express findings as to which aspects of the code enforcement officer’s notice it is agreeing with or not agreeing with. L. Routhier proposed to rephrase his motion.

Motion made by L. Routhier, seconded by S. Davis, to deny the administrative appeal and to sustain the determination of the Deputy Code Enforcement Officer because the property is being used in violation of Section 6.2 regarding nuisances, Section 4.7.4(b) and (c) regarding construction yards and industrial uses, and Article 13 regarding non-residential site plans, and to grant the remainder of the administrative appeal related to the determinations that the property is being used for boat storage, and as an auto and marine light repair shop for automotive and marine repair purposes.

S. Hart took a roll call:

R. Grenier - opposed

S. Davis - yes

B. Knightly - yes

L. Routhier - yes

The motion passed with a 3 to 1 vote in favor.

R. Grenier stated that he may have opposed this, but that he would hate to see this come before the board again in the future.

K. Hayes returned to the board.

**2. Other Business** – None.

**3. Minutes**

November 23, 2021

Motion made by S. Davis, seconded by K. Hayes, to approve the minutes of the November 23, 2021 meeting. Motion carried with R. Grenier abstaining.

**4. Adjournment**

Motion made by K. Hayes, seconded by S. Davis, to adjourn the Zoning Board of Adjustment meeting of January 25, 2022 at 10:15 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary