Appeals Board Meeting October 23, 2014

Administrative Appeal of Thomas & Kathleen Bryant to reverse the Planning Board Approval of the application to construct a building intended to store fireworks at 2 JB’s Way, Wiscasset, ME

Present:

Susan Blagden, Chair

Peter Rines, John Blagdon, Susan van Alsenoy, Kathleen Lincoln, Joan Barnes

Meeting called to order 6:30 and Susan advised the appeal has many points and each point shall be addressed separately.

John Pottle, attorney from Eaton & Peabody is representing the Bryants. He would like questions directed through him and feels all issues are distinct but related and overlapping. Materials and exhibits for Mr. Cohen have not been submitted for the record. Atty. Pottle has handouts.

Tab 4, page 2 had to do with NFPA 1124 code. He feels the area the building is located is residential and had a tax map with green dots showing residents and 1 red dot showing the only business in the area. The seller of the property retained the right of way to the residence beyond which is now owned by the Bryants.

Mr. Cohen opened up his fireworks business in 2013. The Planning Board meeting to increase the building size where he stored merchandise gave light to the real use for his building and a building storing fireworks is not permitted in a residential area and further, there is a mobile home park in the area. Explosive materials around town infrastructures, children, houses, etc. He feels the Planning Board did not consider the area and should have come out to look at the area.

Susan asked how many pounds of fireworks are stored. Mr. Pottle said NFPA might address that but the Planning Board did not query that information.

Mr. Cohen advised the NFPA 1124 is very specific. The building was inspected in 2013 and approved with heavier doors, fire extinguishers and fire suppression, and signage, which he did. The codes are different depending on the size of the building. The Planning Board approved him 7-1 and the Bryants’ property is zoned rural. Class C consumer fireworks stored there is within the law. Mr. Pottle needs the specific facts from the state Fire Marshall’s findings.

Katie Bryant says she spoke with the Fire Marshall’s office. The Fire Marshall asked Mr. Cohen if the area was residential and he reported it is rural and approved it. Mr. Pottle said you can have a residential area with commercial buildings and should be zoned commercial, not residential, and sited Casey’s Wood Products property. John Blagdon visited the Bryant’s property said how nice the property looked. Mr. Cohen said the building is solely dedicated to fireworks – no storage for merchandise. The Fire Marshall said they don’t need to inspect warehouses, but Mr. Cohen went through the steps just the same.

Mr. Bryant feels the Planning Board didn’t examine the conversion. The town requires the Planning Board to review and send certified letters to abutters for the change in building use from general merchandise to hazardous materials. Mrs. Bryant said the town didn’t approve the change to house only fireworks.

Mr. Cohen reported he spoke with the CEO and the town planner. Fireworks are up to the local fire departments, and if the fire marshal okayed his plan, it would be acceptable with the fire department. He reports the building must be 8,000 sq. feet before the fire marshal gets involved. Mr. Blagdon asked Ray Soule if the abutters were notified. He agreed the town planner was excellent and if it is zoned rural, lots of things are permitted. Per the town ordinances, it is zoned rural. Susan Blagden reported it was zoned as of 1991 and there have been no changes.

Mrs. Bryant was looking to have the Fire Marshal supply something in writing as Mr. Cohen had nothing. Joan Barnes stated she had an e-mail from the Fire Marshal’s office where he had approved the use of the building. Mr. Cohen said if he was in violation, he would have been written up and he hasn’t been.

Susan Blagden pointed out again this is a rural area, not residential.

Mr. Bryant wondered if the town’s ordinances took precedence over state rules. John Blagdon said the laws are different between the Federal, State and local governments and that is not the case here. NFPA standard is not tied to residential areas - the wording just says area. Mr. Pottle sated development patterns make this a residential area and it has more to do with what is there instead of zoning.

Susan asked if Hazardous Materials are defined in NFPA. Peter reports NFPA codes are standards, and state laws are statutes. Mr. Cohen felt they were confusing storing with manufacturing. Susan wondered if the State Fire Marshal’s office would come before the Planning Board and John Blagdon would like documentation in writing.

Karl Olson is the surveyor who is also a member of the planning board. He reports both he and Al Cohen abstained from sitting on the board and were members of the audience. Both were being objective and avoiding a conflict of interest – it was correct to step down. Ray Soule reported Mr. Cohen did not try to influence the board.

Mrs. Bryant pointed out the fire marshal approved the change based on the type of area. Peter Rines stated a road with 5 houses may be a residential road, but still in a rural area. Peter Rines moved we send it back to the Planning Board for reconsideration pending a written answer from the Fire Marshall’s office. Seconded by Joan Barnes. Mr. Pottle and the Bryants feels that is a good decision.

John Blagdon asked the Bryants if the warehouse was present when they moved in and they said it was. Mr. Cohen is a good neighbor until the fireworks showed up. The Bryants went to the town planner who said they could do nothing. It has to go before the Planning Board, but they couldn’t see where the planning board approved it. Peter Rines said it was up to the Fire Chief. Mr. Bryant said it must go before the Planning Board as this is gross oversight.

Ray Soule said the board knew what it was doing and approved the request.

Susan said there was a motion on the floor to send it back to the planning board with the fire marshal approval in writing. Vote yes 6 – 0.

Mr. Cohen wondered where all this has left him. He understood he had approval and poured the cement, bought the building and hired a crew. If he waits for the appeal, it will be later in the year and he will be out a fair amount of money.

Peter said this is a difficult situation and we are trying to be sensitive to both parties. He wondered how we could word this so he could erect his building. Susan said Mr. Cohen has been approved to put up the building and he can do it as that is what he has been approved for. The planning board decision says nothing about fireworks. Moved that we deny the appeal to send it back to the planning board. Peter seconded the motion. Vote was 6 – 0.