

**TOWN OF NAPLES
BOARD OF APPEALS
MINUTES
Wednesday, May 27th, 2014
Municipal Office Building**

John Flaherty called the meeting to order. Also present were Barry Freedman, Russell Lashua, Skip Meeker, Code Enforcement Officer Renee Carter and Town Secretary Kate Matthews.

Barry Freedman made a motion to approve the minutes from November 13, 2013. Skip Meeker seconded the motion. All were in favor.

First order of business:

An administrative appeal for property located on Dees Way and shown on Naples Tax Map U 35, Lot 13-1 submitted by Cynthia White.

David Silk was present to represent Cynthia White. He wanted to reinstate the fact that Peter Serunian's second mooring was not valid and should not have been issued. Mr. Flaherty thought that this issue had been resolved already. Mr. Silk said that the last time it was brought before the board that the decision was made on the second mooring that was issued in 2012, now Mrs. White wanted the 2013 mooring ruled on.

Skip Meeker made a motion that according to Exhibit A, Section 2 of the attached document the second mooring issued was not valid. Russell Lashua seconded the motion. The board was in favor.

Next order of business:

An administrative appeal regarding the Code Enforcement Officer's interpretation for property located on 75 Scenic Drive and shown on Naples Tax Map U10, Lot 13 submitted by Attorney Robert Neault on behalf of James and Dina Trebbe.

Mr. Neault was present to represent Mr. and Mrs. Trebbe. The Trebbes were not granted a building permit for their home, to be located at 75 Scenic Drive based on Code Enforcement Officer Renee' Carter's decision. She sent out an enforcement letter stating that based on Naples Shoreland Zoning Ordinance, the lot would not be meet Land Use Standards and Requirements as there would be what was considered as two residential dwelling units on the property once the home was built. Her findings were based on the definition of a Residential Dwelling Unit, which states that the unit would contain cooking, sleeping, and toilet facilities. Her determination was that a cooking facility would be defined as "an arrangement within a residential unit which provides, but is not limited to the following features: refrigeration capability; hot plate, electrical frying pan, toaster oven, crock pot, counter top burners, stove or microwave; and facilities for washing and cleaning."

Based on that definition, Mrs. Carter would only grant the building permit to The Trebbes once she received a notarized letter from them, stating the 2nd floor above the garage would be used as an office and that the plumbing, the stove, and the refrigerator would be removed from the existing kitchen, and that the cupboards would be utilized for office use, not residential use. Those conditions would be noted on the building permit and at the registry of deeds. She also would require The Trebbes to agree to periodic unannounced inspections by the Town to guarantee the garage is not being used as another dwelling unit.

Mr. Neault argued that the unannounced periodic inspections by the Town would go against the Country's 4th amendment rights. He also said that since there was no definition in any of the Town's ordinances for a 'cooking facility' that her decision to remove the plumbing, stove, and refrigerator would be unjust. He believed that cooking is the process of heating up food for consumption. His clients agreed to removing the stove and the microwave oven, but according to our ordinances she would have no grounds to ask any of her other conditions.

Barry Freedman made a motion to deny the permit based on the Code Enforcement Officer's decision. He wanted to uphold the decision of the C.E.O. that there would be what would constitute as two separate residences if the building permit was granted. There was no second, so Mr. Freedman withdrew the motion.

Skip Meeker made a motion to grant an appeal for the denial of the building permit, and that a building permit should be issued based upon the termination of either the cooking, sleeping, or toilet facilities in the present dwelling upon completion of the new building. There was no second, so Mr. Meeker withdrew his motion.

Since there was no definition for 'cooking facilities' in any of our ordinances, the rest of the board did not feel comfortable ordering The Trebbes to remove any particular items that may be found in a kitchen. Mr. Meeker then made a motion to grant The Trebbes request and to order the CEO grant the requested building permit upon removal of either the cooking, sleeping or toilet facilities of the present dwelling by the time that a certificate of occupancy is issued for the new dwelling. Barry Freedman seconded the motion for discussion. The board approved the motion three to one.

Meeting adjourned.

Respectfully submitted,

Kate Matthews
Town Secretary

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BOARD OF APPEALS**

Board Decision on 2013 Appeal of Cynthia White

The Town of Naples Board of Appeals, after public notice and after consideration of Cynthia White's appeal, hereby enters the following decision:

A. Findings of Fact.

1. On July 6, 2013 the Town of Naples Harbor Master approved Peter Serunian's application for a second mooring permit ("Permit").
2. Pursuant to Section 16.G.1 of the Naples Shoreland Zoning Ordinance, on August 2, 2013 Cynthia White ("White") timely appealed the issuance of the Permit to this Board ("2013 Appeal").
3. On August 28, 2013 Board action on the 2013 Appeal was stayed pending a final decision in an appeal Ms. White had filed with respect to a second mooring permit issued to Mr. Serunians in 2012. Permits are issued on an annual basis.
4. On August 30, 2013, the Maine Superior Court issued a decision on Mrs. White's appeal of the Harbor Master's decision in 2012 to issue the Serunians a second mooring permit ("Decision"). The court held that State law prohibited the Town from issuing a second mooring permit to the Serunians because the 2012 permit was not issued pursuant to an allocation system open to all residents,. The court remanded the matter to this Board.
5. On October 30, 2013, this Board found, in accordance with the Decision, that the second mooring issued to the Serunians in 2012 was not issued pursuant to an allocation system open to all residents and therefore the 2012 permit was invalid.
6. On December 19, 2013 the Maine Superior Court entered a final judgment affirming the Board's October 30, 2013 determination that the 2012 permit was invalid. The judgment was not appealed.

B. Conclusions of Law.

1. As stated in the Decision, absent an allocation system open to all residents, State law prohibits a Harbor Master from issuing more than one mooring permit per parcel.

2. The Harbor Master's decision to issue the Permit is vacated and Mrs. White's appeal is sustained. The Permit should not have been issued as it was for a second mooring.

Dated: _____, 2014

Chair, Board of Appeals
Town of Naples