

**TOWN OF WELLS, MAINE
ZONING BOARD OF APPEALS
FINDINGS OF FACT AND CONCLUSIONS
(Christopher Chase – Appeal No. 2)**

BACKGROUND OF APPEAL:

The Zoning Board of Appeals held a public hearing of the combined administrative appeals of Christopher Chase (“Chase”) on July 16, 2015, pursuant to its authority under 30-A M.R.S. § 2691(4). Chase appeals the issuance by the Town’s Code Enforcement Officer (the “CEO”) of two (2) Notices of Violation and Orders to Correct issued on May 14, 2015¹ in connection with property he owns located at 476 Littlefield Road and identified on the Town’s tax maps as Map 34, Lot 4-1 (the “Property”).

The first Notice of Violation and Order to Correct (“NOV #1”), which is the subject of a separate appeal, asserts that Chase is operating a home business and/or a business contractor operation in violation of the Code of the Town of Wells (the “Town Code”). “Business, contractor” is not a permissible use in the RA zone. “Home businesses,” however, are allowed in the event that they can meet the criteria prescribed under § 145-51 of the Town Code. Chase, however, did not secure the requisite permits for a home business under § 145-51(D) of the Town Code. More particularly, the CEO claims that because Chase located various business materials and multiple construction vehicles on the Property and on an abutting property owned by Charles Robinson (“Robinson”), this supports the conclusion that Chase is operating a business from the Property (be it a “home business” or a “business, contractor”).

Chase claims that because the vast majority of the materials and equipment at issue is stored on Robinson’s property, he is not operating a business from the Property. Chase asserts that simply driving over the Property from Robinson’s property to access a public way does not meet the definition of “home business” in § 145-10 of the Town Code.

The second Notice of Violation and Order to Correct (“NOV #2”), which is the subject of this appeal, asserts that Chase has a shed/structure on the Property that has not been properly permitted, in violation of § 145-61 of the Town Code. Chase claims that because the shed is on wheels and is intended to be sold, it does not meet the definition of “structure” contained in the Town Code. According to Chase, it therefore does not require a permit.

The Board considered each appeal in turn. After closing the public hearings, the Board deliberated and denied each appeal on July 16, 2015. The Chair instructed the Town Attorney to prepare separate draft findings for each appeal for the Board’s consideration at the August 10, 2015 meeting. After review and revision of said drafts, the Board adopted them, as amended.

¹ While one of the Notices of Violation notes a date of March 14, 2015 all of the parties agree that this was a typographical error and that both notices were issued on May (not March) 14, 2015.

What follows are the Board's findings and conclusions on Chase's administrative appeal of NOV #2.

BOARD MEMBERS (AND OTHERS) PRESENT:

Board members Wilber Gosbee, Robert Lavoie, Jason Heft, John Ardini, and Hiroko Lindsey were present at both the public hearing and the deliberations on July 16, 2015. Town Attorney, Leah Rachin was also present. Jason Heft and Hiroko Lindsey were absent from the August 10, 2015 meeting at which these Findings and Conclusions were considered. Board Member, Dr. Louis Cohen, was present at the August 10, 2015 meeting. Dr. Cohen represented that he was familiar with the two appeals because he had reviewed the recording of the July 16, 2015 proceedings and the associated documents.

Jodine Adams and James Genereux appeared on behalf of the Code Enforcement Office, which office was represented by Sandra Guay, Esq.

Mr. Chase appeared and was represented by Matthew Williams, Esq. Mr. Charles Robinson also was present and was represented by Attorney Williams.

Attorney James Bartlett appeared on behalf of various abutters, Robin Reeves, William Perkins, Linda Hazeltine, and neighbor Alan Zullo.

FINDINGS OF FACT:

1. The Property is located at 467 Littlefield Road, Wells, Maine, in the Residential A District (the "RA"). It is further identified as Tax Map 34, Lot 4-1.
2. As a result of photographs received from a neighbor in relation to the land use violations identified in NOV #1, it came to the Code Office's attention that an unpermitted shed/small cottage was located on the Property. The photographs in the administrative record depict the shed/cottage as situated on a piece of equipment fitted with wheels (thereby making it capable of being moved around the Property).
3. On or about May 14, 2015, the Code Office issued another Notice of Violation and Order to Correct (i.e., NOV #2), which is the subject of this appeal. In sum, NOV #2 asserted that the shed/cottage was a "structure" as defined in § 145-10 of the Town Code. Because all structures require a permit under § 145-61 of the Town Code, and because Chase did not secure such a permit, NOV #2 advised Chase that he was in violation of the Town Code. NOV #2 gave Chase until June 15, 2015 to obtain the appropriate permits.
4. Chase appealed NOV #2 on June 12, 2015 asserting that because the cottage was on wheels, and because it was only going to be situated on the Property temporarily, it was not a "structure," because it did not have a "fixed location on the ground." According to Chase, therefore, it did not require a permit under § 145-61.

5. The term “structure” is defined in § 145-10 of the Town Code as follows:

Anything constructed, assembled or erected having a fixed location uninterrupted for more than 10 days on or in the ground or in the water. Any attachment to a structure shall be considered to be part of the structure. The term "structure" shall not include signs; utility distribution lines; stone walls; fences; embankment retaining walls; culverts; fire cisterns; fire hydrants; mailboxes; vehicles registered for use on public ways; at-grade paving, such as sidewalks, patios, driveways and parking lots; and other items located in the public right-of-way normally and customarily related to a road. The term "structure" shall not include picnic tables and other tables, chairs, benches and other seating, trash cans, bicycle racks and planters each of which can be transported by two or fewer persons without use of mechanical assistance. The term "structure" includes utility transmission lines.

6. Section 145-61 of the Town Code provides that, “[n]o building or other structure shall be erected, moved or enlarged in area (including gross floor area) or volume without a permit issued by the Code Enforcement Officer.”
7. Chase obtained the cottage from a client and intends to sell it as soon as he is able. It is not used as a dwelling, for storage, or for any other purpose. Chase states that he is only temporarily storing the cottage and that he has no intention of it becoming a part of the Property. Based on these facts and because the cottage is on wheels, Chase argues that it does not have a “fixed location...on or in the ground.” Therefore, it cannot be a “structure” as defined in the Town Code, and does not require a permit under § 145-61.
8. While the evidence suggests that Chase has moved the cottage to different locations on the Property, Chase’s own testimony supports the conclusion that the cottage has not been moved at least every ten days. Additionally, photographs dated March 16th, April 24th, and May 16th of this year show that the cottage has been located in the same location for more than 60 days. While more recent photographs show that the cottage has been moved, it has nevertheless been in its current location for more than 10 days.

CONCLUSIONS

1. This Board has jurisdiction pursuant to 30-A M.R.S. § 2691(4), which provides that “[a]bsent an express provision in a charter or ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory or may not be appealed, a notice of violation...by a code enforcement officer...is reviewable on appeal by the board of appeals.” Because neither the Town Charter nor the Town Code contains any express provision in this regard, the Board has jurisdiction to hear the appeal.
2. Both administrative appeals were timely filed pursuant to § 145-69(A).
3. As owner of the Property, Chase has standing to appeal the CEO’s issuance of NOV #2.

4. We are troubled by these particular set of facts. It is clear to us that Chase does not intend the cottage to become a permanent fixture on the Property. However, there is no provision in the Town Code that grants immunity from § 145-61's permit requirement in the event that a structure is only intended to be stored on a parcel for a short period of time.

5. Because we are bound to interpret the plain wording of the Town Code, we find that the cottage is a "structure" as defined in § 145-10. It is something that has been "constructed, assembled or erected." Moreover, both the photographic evidence and Chase's own testimony establish that the cottage has had a "fixed location uninterrupted for more than 10 days on or in the ground." Finally, the cottage does not fall within the various exceptions to the definition of "structure" itemized in § 145-10 of the Town Code. Accordingly, we find that the cottage is a "structure." Because § 145-61 of the Town Code requires all structures to have building permits and because Chase has neither applied for nor secured a building permit for the cottage, we find no error in the CEO's issuance of NOV #2.

DECISION

Based on the above Findings of Fact and Conclusions, the Wells Zoning Board of Appeals decided on July 16, 2015 by a vote of 4 to 1 to DENY the administrative appeal.

Sincerely,



Wilber L. Gosbee, Chairman