

**TOWN OF WELLS, MAINE
ZONING BOARD OF APPEALS
FINDINGS OF FACT AND CONCLUSIONS
(Christopher Chase – Appeal No. 1)**

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 this 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 a separate 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 #1.

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. In or around September 2014, due to personal circumstances, Chase was required to move all of the equipment and vehicles associated with his business (Chase Building Movers) from its prior location in Wells. Chase moved said equipment and vehicles to the Property.
3. On or about January 14, 2015, in response to several complaints by abutters regarding noise, odors, and heavy equipment operating at the Property prior to 7:00 a.m., the Code Office issued a Notice of Warning to Chase. It cautioned him regarding the operation of a business at the Property without the appropriate permits. Said Notice was accompanied by an application package for a "home business" permit.
4. Chase did not apply for a "home business" as required by the January 14, 2015 Notice of Warning. As a result, on or about February 17, 2015, the Code Office issued a Notice of Violation and Order to Correct asserting that Chase was operating an unlawful unpermitted business from the Property. The Code Office once again included an application package for a home business and notified Chase that he must comply with the permit requirement no later than March 12, 2015.

5. On or about March 12, 2015, during a telephone conversation with CEO Jodine Adams, Chase stated that he had not been operating his business on the Property since the January 14, 2015 Notice of Violation was sent. He indicated that he was not storing any business equipment on the Property nor was he allowing employees to gather there. (We find these representations to be consistent with his testimony that he had moved the bulk of his business equipment and vehicles to Robinson's abutting property by this point in time.) When asked by the Code Office if they could inspect the Property to verify his representations in that regard, Chase stated that they could only do so from the road and that they could not enter on to the Property. The Code Office could not see what was happening on the Property from the road.
6. During the spring of 2015, neighbor Alan Zullo ("Zullo") provided the Code Office with photographs and videos depicting alleged construction vehicles and business equipment on the Property. The videos showed fully loaded vehicles, bearing the name of Chase's business, driving through the Property to access Littlefield Road. Chase confirmed that he runs the vehicles from Robinson's property through his own to access Littlefield Road. He further confirmed that all of the loaded vehicles would stop on the Property for safety checks before exiting on to Littlefield Road.
7. When Chase was shown Zullo's photos and video, he reiterated his position that he does not operate a business from the Property. According to Chase, because his business vehicles and equipment are stored mostly on Robinson's abutting property, he is not using the Property for business purposes. This assertion forms the basis of the within appeal.
8. On or about May 14, 2015, the Code Office issued another Notice of Violation and Order to Correct (i.e., NOV #1), which is the subject of this appeal. In sum, NOV #1 asserted that Chase was operating either a "home business" or a "business, contractor" at the Property. While businesses in the latter category are prohibited in the RA District, home businesses are permitted, so long as they comply with the performance criteria enumerated in § 145-51 of the Town Code. NOV #1 noted that although the Code Office had previously provided the relevant application forms for a home business to him, Chase had failed to complete and return them.
9. Chase appealed NOV #1 on June 12, 2015 asserting that "[d]riving over a property from an adjacent property does not meet [the definition of "home business]."
10. The term "home business" is defined in § 145-10 as "any activity conducted for financial gain which is carried on in a dwelling unit or structure accessory to a dwelling unit."
11. The term "business, contractor" is defined in § 145-10 of the Town Code as "[a] business engaged in the provision of a service off premises but which has an office and equipment/materials stored on the premises."

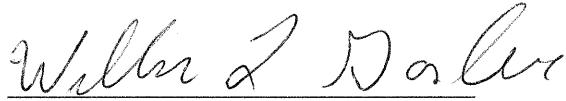
CONCLUSIONS

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 #1.
4. Chase first argues that he is not a “business, contractor” as defined in § 145-10 of the Town Code because said definition requires both an office and equipment on the premises. He asserts that he has neither an office nor any equipment on the Property. We reject this argument. For the reasons set forth in the next paragraph, we find that Chase does have an office at the Property. There was conflicting evidence regarding whether Chase had business equipment stored on the Property. While some of the vehicles and equipment located on the Property clearly appeared to be construction related, Chase indicated that they were for his own personal use. However, we need not reach the issue of whether the Property is being used as a “business, contractor” because as discussed below, we find that the Property is a “home business,” as defined in § 145-10 of the Code.
5. When asked where “Chase Building Movers” was located (if not at the Property), Chase stated that his business is located “wherever my pick up is.” We accept Chase’s testimony that he often works at his computer out of his truck, or, wherever else he happens to be. However, the totality of the evidence suggests that the Property is, in fact, being used as a “home business.” First, Chase’s business vehicles are registered to the Property’s address. Second, Chase Building Mover’s registered address with the State of Maine is at the Property. Third, Chase testified that he works from his computer at home and that he keeps his business files at the Property. Fourth, the testimony of both Chase and a number of abutters indicates that his business’ heavy equipment regularly passes through the Property at least twice per day and that safety checks are routinely conducted at the Property before loaded vehicles enter on to Littlefield Road.
6. Based on this testimony, Chase would simply not be able to conduct his business if he did not use the Property to access a public way. Finally, it is undisputed that Chase Building Movers has no other business office or location. Based on these facts, we conclude that Chase is operating “an activity conducted for financial gain” from his home at the Property, and that it is therefore a “home business.” Because § 145-51(D) specifically requires such businesses to obtain various permits, and because Chase has neither applied for nor secured the requisite permits, we find no error in the CEO’s issuance of NOV #1.

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,

A handwritten signature in cursive script that reads "Wilber L. Gosbee". The signature is written in black ink and is positioned above a horizontal line.

Wilber L. Gosbee, Chairman