

APPROVED

**TOWN OF WELLS, MAINE
ZONING BOARD OF APPEALS
FINDINGS OF FACT AND CONCLUSIONS**

BACKGROUND OF APPEAL:

The Zoning Board of Appeals held a public hearing of the administrative appeal of Charles Robinson (“Robinson”) on August 10, 2015, pursuant to its authority under 30-A M.R.S. § 2691(4). Robinson appeals a Notice of Violation and Order to Correct issued to him on May 26, 2015 (the “NOV”) by the Town’s Code Enforcement Officer (the “CEO”) in connection with property he owns on Ridge Top Lane, identified on the Town’s tax maps as Map 26, Lot 33 (the “Property”). The Property is located in the Town’s Residential A zoning district (the “RA zone”).

The NOV asserts that Robinson is conducting a “business, contractor” at the Property in violation of the Code of the Town of Wells (the “Town Code”), which does not permit such a use in the RA zone. The NOV is based on observations made by representatives of the code enforcement office during a number of site visits conducted in May, 2015. During those visits, Robinson verified that abutter Christopher Chase (“Chase”) was storing equipment and vehicles associated with his business on the Property.

Robinson argues that because the Town Code’s definition of “business, contractor” expressly requires a lot to contain an office before it can be classified as such a use, and because the Property is a vacant lot (with no office located there), it cannot be a “business, contractor” use as asserted in the NOV.

After closing the public hearing, the Board deliberated and unanimously denied Robinson’s appeal. The Chair instructed the Town Attorney to prepare draft findings for the Board’s consideration at its August 24, 2015 meeting. After review and revision of said draft, the Board adopted them, as amended.

BOARD MEMBERS (AND OTHERS) PRESENT:

Board members Wilber Gosbee, Robert Lavoie, John Ardini, and Dr. Louis Cohen were present at both the August 10, 2015 public hearing and deliberations. Town Attorney, Leah Rachin was also present.

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

Mr. Robinson appeared and was represented by Matthew Williams, Esq.

FINDINGS OF FACT:

1. The Property is located on Ridge Top Lane, Wells, Maine, in the RA zone. It is further identified as Tax Map 26, Lot 33.
2. On December 22, 2014 members of the code enforcement office met with Robinson at the Property regarding complaints that he was storing business equipment and vehicles owned by Chase. At this meeting, Robinson confirmed that he was doing so.
3. On May 13, 2015 the code office issued Robinson a "Notice of Warning." Said notice advised Robinson that he was operating an unlawful "business, contractor" storage yard on the Property. The notice also informed Robinson that such a use was not permitted in the RA zone and that he would have to "cease all storage of construction equipment and construction related material by May 22, 2015."
4. On May 21, 2015, Assistant CEO David Johnson ("Johnson") met with Robinson at the Property. Robinson verified at that meeting that he was continuing to store Chase's vehicles and equipment on the Property.
5. On May 26, 2015, Johnson again met with Robinson at the Property. Chase's equipment and vehicles remained on the Property.
6. During the spring of 2015, neighbor Alan Zullo ("Zullo") provided the code office with photographs and videos depicting fully loaded construction vehicles bearing the name of Chase's business driving from Robinson's property, through Chase's abutting property, and on to Littlefield Road. It was undisputed by either Robinson or Chase that this activity occurred and continues to occur.
7. Based on the facts asserted in paragraphs 2 through 6, the code office issued the NOV to Robinson.
8. Chase also was issued a notice of violation in conjunction with his storage of materials and vehicles on Robinson's property and operating a business from his own lot. Chase appealed the notice to this board. While Chase's appeal was the subject of separate proceedings, the arguments raised in that appeal are relevant here because they are so closely related to the issues presented in Robinson's present appeal. Chase based his appeal on the following arguments. First, he asserted that under the Town Code, he was not operating a business from *his* property because he was storing his equipment and vehicles on *Robinson's* property. Second, he argued that neither he nor Robinson was operating a business from Robinson's property because there is no office on Robinson's property. We rejected those arguments and denied Chase's appeal.
9. In conjunction with Chase's separate but inextricably related appeal, we found that Chase simply could not operate his business without storing his vehicles and equipment on Robinson's abutting lot. Similarly, in the instant appeal, we find that Chase's use of Robinson's property is part and parcel of Chase's ongoing home business use. In

essence, because the two properties are used in concert with each other, we find that Robinson's Property is being used in a manner that meets the definition of "business, contractor." Were we to find otherwise, anyone could evade the Town Code's permitting requirements (for either a "home business" or a "business, contractor") by simply using an abutting property to conduct constituent parts of their business. Such an interpretation defies logic and is contrary to Maine law, which requires us to interpret ordinances in a manner that would "avoid absurd, illogical or inconsistent results." See *Kurlanski v. Portland Yacht Club, et al*, 782 A.2d 783, 786 citing *Wright v. Town of Kennebunkport*, 1998 ME 184, ¶ 5, 715 A.2d 162, 164.

10. We accept as fact both Robinson's and Chase's representations that Robinson accepts no compensation for Chase's storage of his business equipment and vehicles on the Property. For many years, Robinson has allowed neighbors and friends to store oversized items and vehicles there. Because the parcel is large (approximately 9 acres) and relatively hidden from public view, Robinson believes that he is doing the community a service by allowing people to move large and unsightly items from their small parcels to the Property.
11. The Board wishes to make clear (and the Code Office agreed) that the instant appeal is limited to the issue of Chase's storage of his business equipment and vehicles on Robinson's property. Robinson's storing of other individual's materials and/or vehicles on the Property is outside of the scope of this appeal.
12. 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."
13. 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."
14. Section 145-62(A) of the Town Code provides that, "[i]t shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partially altered or enlarged in its use until a use permit is issued by the Code Enforcement Officer. No use permit shall be issued unless the proposed use of the building(s) or land conforms to the requirements of this chapter..."
15. Section 145-21(E) of the Town Code provides that unless a use is specifically permitted within a particular land use district, then it is prohibited.

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. Robinson’s administrative appeal was timely filed pursuant to § 145-69(A).
3. As owner of the Property, Robinson has standing to appeal the CEO’s issuance of the NOV.
4. In sum, we find no error in the CEO’s issuance of the NOV because:
 - (a) Chase uses Robinson’s property, seamlessly with his own abutting property, to conduct his business. Chase’s use of Robinson’s property is a regular, almost daily occurrence. Were Robinson not to allow Chase to store his business equipment and vehicles on the Property, and to drive them through the Property, Chase would simply not be able to conduct his business.
 - (b) Section 145-62(A) of the Town Code prohibits the use of any property unless a use permit is obtained.
 - (c) Neither Chase nor Robinson obtained a use permit for the storage of Chase’s business equipment and vehicles on the Property as either a “home business,” or a “business, contractor,” or, under any other use category.
 - (d) Even if the use of Robinson’s property is neither a “business, contractor” storage yard nor a “home business” under § 145-10 of the Town Code, § 145-21(E) of the Town Code prohibits *any and all* uses unless they are expressly listed as permitted in a particular land use zone. No other permitted use has been identified that would allow Chase to use Robinson’s property in the manner in which it is being used.

DECISION

Based on the above Findings of Fact and Conclusions, the Wells Zoning Board of Appeals decided on August 10, 2015 by a vote of 4 to 0 to DENY the administrative appeal.

Sincerely,



Wilber L. Gosbee, Chairman