

**Town of Belgrade
Planning Board
July 1, 2021 / 6 p.m.**

This meeting was conducted online. A recording of the meeting can be viewed at
<https://youtu.be/j2inaX972o8>

M I N U T E S

Call to Order at 6:03 pm by Peter Rushton, Chairman

Present: Planning Board Members George Seel, Peter Rushton, Rich Baker, Craig Alexander, Sara Languet, Gary Fuller CEO, Planning Board Secretary Julie Morrison, Jeff Allen, Greg Levinsky, Samantha Grant, Rick ?, Bill Desmond, Michael Hodgins, Roger Katz, Stacey Richard, Amanda Meader, Sue Terhume, Town Manager, Anthony Wilson, Terry Terhume.

Called to Order 6:03 pm by Peter Rushton, Chairman

1. OLD BUSINESS

A. Discussion of legal opinion for a COMMERCIAL DEVELOPMENT in SHORELAND ZONE APPLICATION – Change of use of prior approved application. Applicants/Owners: Brightside Wooden Boat Services, Inc. / Shawn Grant
Location: 21 Hulin Road, Map 26 Lot 58. Purpose: New commercial use (home-occupation business to a commercial operation). No new construction.
Legal opinion is the lots across the street are not part of the application. See attached memo from Michael Hodgins. Mr. Katz thanked Michael Hodgins for the legal opinion memo, they will take a closer look and review it. The full application is expected for the next agenda.

B. SUBDIVISION APPLICATION – Applicant: William Desmond. Owner: Bella Casa. Location: Oakland Road/Routes 8 & 11, Map 10, Lot 40. Purpose: develop three-lot subdivision.
George Seel made a motion to accept the Minor Subdivision application as complete, 2nd by Craig Alexander. 4-0-1 Sara languet abstained; she was not part of original application.

George Seel made a motion Not to hold a public meeting, 2nd by Rich Baker. 4-0-1 Sara languet abstained; she was not part of original application.

George needed to leave the meeting at 7 pm.

The finding of facts was completed. Vote to approve the Minor Subdivision 3-0-1 Sara languet abstained; she was not part of original application. Approved.

C. Continued review of Town's Subdivision Ordinance with KVCOG planner Charles Tetelman.

More discussion and notes made; work continues.

3. OTHER BUSINESS

A. Consideration of meeting minutes from June 17, 2021.

Motion by rich Baker to approve the June 17th minutes ,2nd by Sara Languet 4-0 Approved.

ADJOURN

Motion to adjourn made by Rich Baker, 2nd by Sara Languet. 4-0 adjourned meeting at 8:48 pm.

Memorandum

To: Town of Belgrade Planning Board
From: Michael A. Hodgins, Esq.
Date: June 30, 2021
Re: Planning Board Questions Regarding the Brightside Wooden Boat Services, Inc.
Shoreland Zoning Permit Application

The following addresses the six questions posed through the Planning Board Chairman after action on the above-referenced Permit Application was tabled at the June 17, 2021 meeting.

QUESTIONS PRESENTED AND ANSWERS

1. What effect does the 2008 Home Occupation Permit have on the proposed commercial use, including whether the commercial use is a principal use?

Answer: The approval of the 2008 Home Occupation Permit has little or no application to the proposed commercial use. The home occupation and commercial use are, by definition, different standards. The fact that the Planning Board in 2008 approved the home occupation use should not be seen as a first step in the approval of the proposed commercial use.

The fact that there is a residence on the property does not mean that there cannot be a separate principal commercial use. The ordinance defines a "principal use" as a use "other than one which is wholly incidental or accessory to another use on the same premises." The home occupation, by definition in the Shoreland Zoning Ordinance ("SZO"), is considered incidental. The boat repair business would not be incidental or accessory to the residence. As discussed further below, Section 15(A)(5) of the SZO contemplates the possibility of multiple principal uses on a single lot.

2. What is the effect of the proposed commercial use (boat shop) physically crossing between two non-conforming lots?

Answer: Because the boat shop appears to straddle the property line, and other parts of Lots 57 and 58 are being used for the proposed commercial use, for purposes of this permit application those lots should be considered merged under SZO Section 12(E) because they are in the same ownership. On their own, they do not meet State Minimum Lot Size requirements. SZO, Section 12(E)(2). (*see*, question 3, below).

3. What is the relevance that Lot 58, which includes the current residence, is smaller than the 20,000 square-foot requirement for dwelling units under the State Minimum Lot Size Law?

Answer: The fact that the current residence and subsurface waste disposal appear to be grandfathered would exempt concerns about the lot size for Lot 58 standing alone. However, the State Minimum Lot Size Law reinforces the fact that Lots 57 and 58 should be considered merged, when read in conjunction with the non-conforming lot provisions of the Shoreland Zoning Ordinance. Section 12(E)(2) of the SZO says that “if a principal use or structure exists on *each lot*, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with for *each lot* conveyed.” (emphasis added). It does not appear that Lots 57 and 58 could be sold separately and both conform to the minimum lot size statute, nor would that be practical given the location of the boat shop crossing the boundary of the two lots.

4. Should Lots 57 and 58 be merged according to SZO Section 12(E)?

Answer: Yes, see the responses to questions 2 and 3.

5. Are Lots 34 and 35 (on the north side of Hulin Road) to be considered separate lots under SZO Section 15(A)(3), and are the lots under consideration less than 68,875 sq. feet?

Answer: Yes, the lots on the opposite side of Hulin Road should be considered separate lots for purposes of this Shoreland Zoning Permit Application. There has been no suggestion that Hulin Road was created by the owner of the land on both sides of the road at a point after September 1971. The same determination was made with respect to Lots 34 and 35 during the attempted permitting of the marina on Lots 34 and 35 in 2018. It is unclear what the total lot area is in the Shoreland Zone for the actual lots under review, however, based upon the square footage shown on the site plan, there is approximately 28,000 ft.² on Lots 57 and 58 combined, with additional area in the Shoreland Zone on Lot 56 which would not appear to double that amount.

6. How should SZO Section 15(A)(5) be interpreted for purposes of calculating the required lot area for a combined principal residential use and principle commercial use of the lots in the Shoreland Zone?¹

Answer: Under Section 15(A)(5) the required lot area dimensions for combined uses must be aggregated, so 100,000 sq. ft. of land area in the Shoreland Zone is required for two principal uses. The Belgrade Shoreland Zoning Ordinance requires that that portion of land falling within the Shoreland Zone stand alone for purposes of determining compliance with the Shoreland Ordinance, therefore, the lot area requirements in Section 15(A)(1) must be met for each of the residential use and the commercial use.

¹ The Shoreland Zone is the entire area within 250 ft. horizontally from the high water mark of a great pond. (see, SZO Section 3, “Applicability” and Section 17, “Definitions.” This is inclusive of, but distinct from, the 100 ft. “setback” area for structures.

For purposes of the existing residence and home occupation, the uses and lots would be considered permitted and/or grandfathered. However, if the residential use and commercial use are to exist together on the same lot, or even if the commercial use were to be sought as a standalone use, the lot area in the Shoreland Zone would need to meet the current requirements. The lots would not be considered grandfathered for commercial use. Because the combined lots within the Shoreland Zone still appear to be undersized, such commercial use would create an impermissible expansion of the nonconforming condition, as determined by the Law Court in *Shawn Grant v. Town of Belgrade*, 2019 ME 160.

In reaching this conclusion, the key language in Section 15(A)(5) is the sentence that states, when “determining whether minimum lot area requirements are met, *only land within the Shoreland Zone* shall be considered.” (emphasis added). That language is clear and unambiguous, as is the fact that this is a proposal for a combined residential use with a principal commercial use.

To confirm the intent of this language in Section 15(A)(5), it is helpful to review related language in the Belgrade Minimum Lot Size Ordinance (“MLSO”). Although it would seem that the substantial area on these lots outside of the 250 ft. Shoreland Zone could be considered for the total lot area required, the Belgrade MLSO also specifies that when considering areas addressed by both the SZO and MLSO, land area and dimensions “effective outside the Shoreland Zone *shall not be considered in determining the conformity of a lot to the area or dimensional requirements of the Shoreland Zoning Ordinance or to the determination of findings with respect to any land use to be considered in accordance with the Shoreland Zoning Ordinance.*” MLSO, Section 3(B)(1). (emphasis added). Reading this language together with Section 15(A)(5) of the SZO, it is clear that only that area between Hulin Road and the 250 ft. Shoreland Zone border can be included in the calculation of whether these lots support a commercial use and/or a combination of residential and commercial uses.

Potential Options for Future Consideration.

Because the current home occupation is permitted, one potential result would be to continue the uses in compliance with the home occupation permit within the Shoreland Zone, and consider a permit for the remaining commercial uses on land outside of the Shoreland Zone. To the extent that rentals or charters run from the home could be approved as an amendment to the home occupation (they are not included in the current home occupation permit), that portion of the proposed activity could conceivably remain active on Lots 57 and 58 with an amendment to the Home Occupation permit, so long as the more intensive commercial uses requiring more than two employees occur on land outside of the Shoreland Zone.

However, the Commercial Development Review Ordinance approval was conditioned upon the existing site plan and dependent upon approval of a Shoreland Zoning Permit, so the Commercial Development Review permit would need to be revisited and amended because it is ineffective without the Shoreland Zoning Permit. To the extent the boat repair shop requires a larger footprint or more employees, Brightside would have to move or reconstruct the boat repair garage entirely outside of the Shoreland Zone, assuming the remaining land can support that activity consistent with existing ordinances.