

14-335-(e)

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Kent Avery, Chair
Robert Bartells
Eric Larsson
Benjamin McCall
Joseph Zamboni, Sec

IR-1 Residential and Shoreland Zone
Interpretation Appeal Decision

Date of public hearing: September 21, 2017

Name and address of Appellant: Thomas Covington Johnson
Island Bay Services
c/o Nicholas Bull, Esq.
693 Main Street
Lovell, Maine 04016

Location of property under appeal: 37 Ballfield Road - Lead CBL 088-J-006 (also includes CBLs 088-I-007 through I-011; 088-I-022; and 088-J-011 through J-003)
90 Ball Field Road - CBL 088-J-066

FOR THE RECORD

Names and addresses of witnesses (proponents, opponents and others):

1. Nicholas Bull, attorney for appellant, Nicholas Bull P.C.
2. Thomas Covington Johnson, Island Bay Services, 37 Ball Field Rd
3. Janine Alues, 108 Hermon Ave.
4. Mark Mulhern, 77 Tapley Rd, Saco Maine
5. Leslie Tuttle, 85 Prince Ave
6. Cindy Putney, 325 Island Ave
7. Rorick Sellers, 89 Pleasant Ave
8. Timmi Sellers, 89 Pleasant Ave
9. Christopher Roberts, 85 Pleasant Ave

Exhibits admitted (e.g. renderings, reports, etc.):

Submitted materials
Oral testimony
Emails submitted to City
Attachment A

A Joseph Zamboni
Sec pro Tem

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The appellant appeals from the Notice of Violation and Order to Correct determination of the Building Authority/Zoning Administrator that the following violations exist at the above identified properties:

1. The construction or moving of eleven buildings, specifically sheds and a shipping container, on the properties without any permits in violation of section 14-463 of the City of Portland Code of Ordinances, which provides that “no building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority; and
2. The parking of a trailer on the properties in violation of section 14-335(e), which prohibits parking a commercial trailer or similar commercial vehicle on property in any residence zone.

The Board derives authority to review orders, decisions, determinations and interpretation of the building authority pursuant to §§ 14-471, 14-472 of the City of Portland Code of Ordinances.

Applicable Ordinance Sections

1. The construction or moving of buildings without any permits is a violation section 14-463 of the City of Portland Code of Ordinances. Specifically, section 14-463 states:

No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. Applications for building permits and certificates of occupancy required by the building code shall also serve as applications for permits required by this article. After the building, structure or part thereof has been completed, altered, enlarged or moved, a certificate of occupancy shall be obtained for the proposed use before the same may be occupied or used. A certificate of occupancy shall be required for any
(d) Occupancy or use, or change of use, of vacant land, except for the raising of crops.

2. It is a violation of section 14-335(e) to park a commercial trailer or similar commercial vehicle on property in any residence zone. Specifically, section 14-335(e) states:

Sec. 14-335(e). Off-street parking restricted.

Off-street parking shall not include:

- (a) More than one (1) commercial motor vehicle in any residence zone, the R-P zone or any B-2 zone;
- (b)...(c)...(d)...

- (e) Notwithstanding (1) [sic] above, any truck body, commercial trailer or similar commercial vehicles in any residence zone or the R-P zone.

Findings

Appellant has demonstrated that the interpretation of the Building Authority/Zoning Administrator ~~that the interpretation of the Building Authority/Zoning Administrator~~ that the issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Satisfied _____ Not Satisfied

Reason and Supporting Facts:

Under section 14-335(e)

Appellant raised defense that container was solely ^{used} for necessary agricultural uses (through testimony of neighbor).

No other evidence was shown to support defense. Board finds that a trailer w/ wheels is located in residential zone. Board recognizes that community seeks to treat animals humanely.

Conclusions

~~Option 1:~~ Option 1: The Board finds that the appellant has satisfactorily demonstrated that the interpretation of the Zoning Administrator that the Building Authority/Zoning Administrator's issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the interpretation of the Zoning Administrator that the Building Authority/Zoning Administrator's issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Dated: 9-21-2017

[Signature]
Board Chair

14-463

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

IR-1 Residential and Shoreland Zone Interpretation Appeal Decision

Board
In attendance
Benjamin McCall
Eric Larsson
Kent Avery, Chair
Joseph Zamboni Sec
Robert Bastells

Date of public hearing: September 21, 2017

Name and address of Appellant: Thomas Covington Johnson
Island Bay Services
c/o Nicholas Bull, Esq.
693 Main Street
Lovell, Maine 04016

Location of property under appeal: 37 Ballfield Road - Lead CBL 088-J-006 (also includes CBLs 088-I-007 through I-011; 088-I-022; and 088-J-011 through J-003)
90 Ball Field Road - CBL 088-J-066

FOR THE RECORD

Names and addresses of witnesses (proponents, opponents and others):

1. Nicholas Bull, attorney for appellant Nicholas Bull P.C.
2. Thomas Covington Johnson, Island Bay Services, 37 Ball Field Rd.
3. Janine Almes, 108 Hermon Ave.
4. Mark Mulhern, 77 Tapley Rd, Saco ME
5. Leslie Tuttle, 85 Prince Ave
6. Cindy Putney, 325 Island Ave
7. Ronick Sellers, 89 Pleasant Ave
8. Tunni Sellers, 89 Pleasant Ave
9. Christopher Roberts, 85 Pleasant Ave.

Exhibits admitted (e.g. renderings, reports, etc.):

Submitted materials
Oral Testimony
Emails submitted to City
Attachment A

1s/ Joseph Zamboni
Sec Pro Tem

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The appellant appeals from the Notice of Violation and Order to Correct determination of the Building Authority/Zoning Administrator that the following violations exist at the above identified properties:

1. The construction or moving of eleven buildings, specifically sheds and a shipping container, on the properties without any permits in violation of section 14-463 of the City of Portland Code of Ordinances, which provides that “no building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority; and
2. The parking of a trailer on the properties in violation of section 14-335(e), which prohibits parking a commercial trailer or similar commercial vehicle on property in any residence zone.

The Board derives authority to review orders, decisions, determinations and interpretation of the building authority pursuant to §§ 14-471, 14-472 of the City of Portland Code of Ordinances.

Applicable Ordinance Sections

1. The construction or moving of buildings without any permits is a violation section 14-463 of the City of Portland Code of Ordinances. Specifically, section 14-463 states:

No building or part thereof shall be constructed, altered, enlarged or moved unless a permit for such action has been issued by the building authority. Applications for building permits and certificates of occupancy required by the building code shall also serve as applications for permits required by this article. After the building, structure or part thereof has been completed, altered, enlarged or moved, a certificate of occupancy shall be obtained for the proposed use before the same may be occupied or used. A certificate of occupancy shall be required for any
(d) Occupancy or use, or change of use, of vacant land, except for the raising of crops.

2. It is a violation of section 14-335(e) to park a commercial trailer or similar commercial vehicle on property in any residence zone. Specifically, section 14-335(e) states:

Sec. 14-335(e). Off-street parking restricted.

Off-street parking shall not include:

- (a) More than one (1) commercial motor vehicle in any residence zone, the R-P zone or any B-2 zone;
- (b)...(c)...(d)...

- (e) Notwithstanding (1) [sic] above, any truck body, commercial trailer or similar commercial vehicles in any residence zone or the R-P zone.

Findings

Appellant has demonstrated that the interpretation of the Building Authority/Zoning Administrator that the interpretation of the Building Authority/Zoning Administrator that the issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Satisfied _____ Not Satisfied X

Reason and Supporting Facts:

Undersession 14-463 6-0

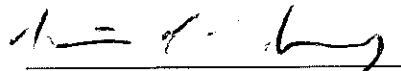
Defense raised that buildings could be grandfathered under 14-581, but no evidence presented that buildings existed prior to 1957. Defense was raised that appellant was not owner of buildings, but Board recognizes that ownership not required for violation as it is on appellants land. Defense was raised that buildings were temporary but Board recognizes that temp structures also need a permit. Defense was raised that property is a farm subject to different laws, but Board recognizes a lack of authority to make determinations of state law. Testimony presented that none of the buildings were permitted. **Conclusions**

The Board recognizes that the community supports this farm, the horses and property owner.

Option 1: The Board finds that the appellant has satisfactorily demonstrated that the Interpretation of the Zoning Administrator that the Building Authority/Zoning Administrator's issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the Zoning Administrator that the Building Authority/Zoning Administrator's issuance of the March 20, 2017 Notice of Violation and Order to Correct was incorrect or improper.

Dated: 9-21-2017


Board Chair

Attachment A

* Nicholas Bull

- Difficulty based on neighbor
- Historically
- Structures are owned by inland residents / horse owners
- City sought warrant to view 1 building inspection (not timely served)
- Photographs inc are taken by city

Argues

#1 ownership of structure contested

#2 Agricultural uses allowed by state

#3 Abutter who is complaining also has 4-5 sheds on her property

Thomas Coviny

3rd time in front of Board

Registered farm

Neighbor is residential

Not an . . .

Tractor Trailer stores hay for winter

simple easy way

Can't have 25+ bails in barn

Has building for 40 year

Storage containers is filled multiple times per year

Tenants own property

Keep open access to neighbors

Building are temp and movable
Using
Feels as though land use is
united

Qs from ZB

① Eric - Zoning Specialist
Buildings #? or listed

② Kent - what buildings are movable?
owner says no permit
says tenants buildings/not his
buildings are temp.

Corp Counsel - issue involves permits
of which there are not

"Yes I violated city zoning but I don't fall
under city zoning."

Kent - Maine Agriculture Exemption Act
Re

Atty Rep to farm bureau
- properly functioning farm under
state law

Ben - Atty Gay - we cannot interp Statutes
but

Atty - Board does not have jurisdiction

Ct recently found it did not
supercede zoning requirements

Ben - Alleging 2x specific defenses
containers have agricultural
+ grandfathered.

Atty for Pet - ownership is in question

Painting a picture for The ZB
believes that

Kent - What authority are you arguing

Atty for Pet. Client is frustrated

Ben - cognizant of pack story but
Bard applied to ordinances

Eric - some buildings are ancient

Petit. arguing tractor trailer

#9

City Waiting Room

CC Barn has permit

She
Pamiers

Janine from island discusses
it to her buildings

CC - History includes composting,
Farm Operation

MRS 154

"Farm Operation" 152

Janine

Storage containers are essential to
keeping horses.

Without storage unit, could not
make

130-150 bails

Reiterate buildings stones dumped there
no elect - horse shelters

~~All Qs~~ Pen Question

Can container be affixed

Tenants have applied for permits

Cindy - mandated to protect horses w/ 3 walled shelter
No other towns require a portable shelter

No temp definition of or portable

Atty for Pet. Why can't there

Q from -

Temp permit has time limitation
Animal shelter is structure

Ordinance section requires permit for
Rori Sellers →

All my buildings are permitted
Can we pass questions

Tunmi Sellers - Question of whether this is
a farm. No problem w/ horses.
City has not seen documentation of
farm.

No problem with buildings or horses
Not personal attacks

Christopher Roberts
Munsf

Atty rebuttal

1986-1989 -

Ought to be recognition of
common sense

Tabled motion

Untabled

End public comment

decisions
separate
cited violations
finding facts

14-463 -

1st

Testimony presented that
none of the buildings were
permitted. Defense was
grandfather since 1957 14-381
No evidence that was seen
or heard that suggests
buildings were grandfather
functioning as a farm

2nd

Ownership of structure
Ownership does not not required

4th

For permitting process
~~Structure~~ Defense that ~~the~~ buildings
were temporary but no evidence
that ~~more~~ as building need to be permitted

5-0

5-0

Ordinance

allows :

No evidence presented that ~~petio~~
appellant

Board recognizes the community
supports this farm, ^{horses} efforts of the
owner to maintain property

Section 14-335(e)

Defense was raised that
this container holds agricultural
materials and
no evidence shown to support defense
burden was on appellant to
show that other statutory
~~applic~~

Trailer w/ wheels is located in
residential zone and no defense
to its otherwise use

Individuals spoke to treatment of
animals.