

Draft

BOARD OF ADJUSTMENT

MINUTES

Thursday, October 25, 2018

The Blowing Rock Board of Adjustment met at the American Legion at 333 Wallingford Street, on Thursday, October 25, 2018 at 5:30 p.m. Members present were Dr. Charles Davant, Laurin Carter, Lance Campbell, Tom Dixson, and Buz Helms. Staff present were Planning Director Kevin Rothrock, Planning and Zoning Support Specialist Tammy Bentley and Town Attorney, Allen Moseley.

Chairman Davant called the meeting to order at 5:30 p.m.

APPROVE MINUTES:

Mr. Dixson made a motion to approve the minutes from May, 2018. Ms. Carter seconded the motion. All were in favor of the motion.

Administrative Appeal 2018-01 King

Kevin Rothrock, Mr. and Ms. Mattar, Mr. Springs, Mr. Sumner, Ms. Kaufman, Mr. Gilmore, Mr. Boyd and Ms. Boyd and Mr. King were sworn in for testimony to the Board.

Mr. Rothrock reviewed the staff report. Mr. and Mrs. King, owners of 169 Mockingbird Lane, Watauga County PIN# 2817-27-3874-000, are appealing a Notice of Violation for short-term rental dated August 8, 2018. A previous notice of violation was sent to the Kings on November 18, 2016. The Kings responded to this violation with a letter including other short-term rentals in the area. There were several emails to and from the Planning Director and the Kings. There was no further action by the Town, as it was assumed that the Kings had ceased renting the property on a short-term basis.

Mr. Rothrock gave the history of the zoning ordinance for the Town and revisions as related to short-term rentals. Short-term rentals are not allowed and not been allowed in the R-15 zoning district since 1984. In June, 2018 the Town Council adopted an ordinance clarifying sections of the Land Use Ordinance dealing with short-term rentals. The ordinance also provided for a permitting process for legal short-term rentals.

Mr. Jack King addressed the Board and thanked them for their time and consideration. Mr. King said the property has been a short-term rental for 30 years and when they purchased the property they decided to employ Blowing Rock Resort Rentals and Sales as their

property manager. Mr. King said they had one problem with tenants in November, 2016 and that the tenants had lied. Mr. King said he assumed the property was grandfathered as the previous owners had rented the property on a short-term basis. Mr. King asked the Board if they would at least allow him to honor the rentals in place through the New Year, if they do not approve his appeal.

Dr. Davant asked Mr. King how the property is zoned. Mr. King responded R-15. Dr. Davant asked if short-term rentals are allowed in R-15. Mr. King responded that he was not aware of this until November 2016. Ms. Carter asked if the property is grandfathered. Mr. King said he did not know, but thinks it should be grandfathered. Dr. Davant asked Mr. Rothrock if there are any grandfathered short-term rentals in R-15. Mr. Rothrock advised there is one in Chetola zoned R-15, one in the ETJ (the ETJ was approved in 2005), and one in R-6, that he is aware of.

Mr. Helms asked if the original code was intended to prevent short-term rentals in this zoning district. Mr. Rothrock said yes, since 1974, to the best of his knowledge. Mr. Rothrock added that it is hard to discern from the meeting minutes; that no code document existed until 1984, when there was a major change to modernize the Land Use Code. Mr. Helms noted that this has been the intent for at least 30 years.

Ms. Carter asked Mr. King when he started short-term renting the property. Mr. King said in 2006. Dr. Davant asked if Mr. King is he is paying occupancy tax. Mr. King said not since he started using online booking sites. He added that he saw a reference to occupancy tax in the May 2018 Town newsletter and that he started paying it then; but that he had not paid since 2014.

Ms. Carter asked Mr. Rothrock if this property can be grandfathered. Mr. Rothrock advised not if the use is illegal at the time.

Mr. Campbell asked why nothing came of the November 2016 notice of violation. Mr. King said he thought the use was grandfathered and Mr. Rothrock said he thought the Kings had stopped renting the property for short-term rentals.

Mr. Helms asked who decides a request for a grandfathered status; the Town Council? Mr. Rothrock said grandfathered status cannot be requested, that the requested use must be a vested right. Mr. Rothrock added that he is confident that this use was illegal in 1984.

Dr. Davant asked if allowed, does the use run with the property. Mr. Rothrock said that assuming the Board can issue a non-conforming status (adding that he does not think they can in this particular case) the use would sunset after 180 days of non-use.

Mr. Moseley advised the Board not to advocate regarding grandfathered uses; that the burden of proof is on the property owner and he/she must provide evidence to satisfy the Planning Director that the use has been continuous with no lapses of 180 days or more.

Mr. EB Springs, of 113 Mockingbird Lane, said he bought his property two years ago and added that he shares a common boundary line with the King property. He provided photographs to the Board and asked that they be made part of the permanent record of this action.

Mr. Springs said that the word 'grandfather' is not in the Town code; that the code references uses, setbacks, and non-conforming uses. Mr. Springs said that if the property was not being used as a short-term rental on March 13, 1984 that the use cannot be continued. Mr. Springs distributed a synopsis of the Land Use Code and asked that it be made part of the permanent record. Dr. Davant asked Mr. Rothrock if there was evidence that the property was a short-term rental since 1984. Mr. Rothrock said no. Dr. Davant asked Mr. King the same question. Mr. King said since 1988.

Mr. Springs distributed certified copies of deeds for the property from 1982 to the present owners and asked that these be part of the permanent record.

Mr. Springs told the Board that they must determine a list of facts, come to a conclusion and make a motion. Mr. Springs distributed a list of finding of facts, asking that this be part of the permanent record. He read aloud the findings of facts.

Mr. Springs told the Board to remember that any rentals of less than 28 days is a non-conforming use. He added that there is no evidence to continue a non-conforming use, as this use cannot be established as of 1984, or any time until November, 2016.

Mr. Ric Mattar, of 140 Mockingbird Lane, said he moved to this address in 1993 and that the subject property was owned by two couples, the Cohens and Cohns, until 2001, when the Cohens purchased the property. Mr. Mattar said they were friends of Joan Cohn and had a key to the house. He added they would park their vehicles in the driveway, and that their kids would ride bikes and trikes in the driveway area. Mr. Mattar recalled that during the co-ownership the property was never rented short-term. Mr. Mattar said that he is not sure if the Cohens rented the property, but they may have.

Ms. Lianne Mattar, also of 140 Mockingbird Lane, told the Board that they have been surrounded by short-term rentals since 1993; across the street and above their house. She said that two of the properties are now owner-occupied. Ms. Mattar said that 2016 was ridiculous with large groups staying at the King property. She said that the property is advertised as sleeping 12, but will accommodate up to 15. Ms. Mattar said there were horse trailers parked at the house during the horse show and often times Mockingbird Lane was blocked by tenants' vehicles. Ms. Mattar said that the police were called 3 times in one night in November 2016. She added that tenants have blocked the road, left trash in and thrown-up in her yard.

Mr. Tom Boyd, of 214 Mockingbird Lane, said he rented his property short-term until he received a notice of violation from Mr. Rothrock nine years ago. Mr. Boyd was not aware of the violation and he had received no complaints in the previous 20 years. Mr. Boyd stated that he is a real estate attorney and researched the Town Land Use Code and NC State Statutes. His research showed that short-term rentals are not allowed in this zoning district and the ordinance is binding. He wanted to be grandfathered but bought the house after 1984. Mr. Boyd rented for 28 day minimum periods thereafter, and added that this is now their permanent address. Mr. Boyd said they have experienced disruptions due to cars, noise, and having the road blocked at 169 Mockingbird Lane.

Mr. Jerry Sumner, of 195 Morning Glory Lane, said that he also rented his home on a short-term basis until 10 years ago when he discovered that it was illegal. Mr. Sumner said he stopped renting his home and did not ask the Town for any special accommodations. Mr. Sumner said the last 5 or 6 years have been very bad with drunks throwing up in the neighborhood, and the tenants being a nuisance. He added that this is a terrible thing to do to a quiet neighborhood. Mr. Sumner stated that he is concerned that there will an accident due to parking in the street.

Ms. Deborah Boyd, of 214 Mockingbird Lane, said there is a big difference between a short-term and a long term tenant; it is a different clientele. Ms. Boyd also said that Mockingbird Lane is so narrow, that when the road was recently repaved, the middle of the road was not striped because it is too narrow.

Mr. Richard Gilmore, of 183 Morning Glory Lane, reiterated the Boyds' and Mr. Sumner's comments and added that the road has been blocked in the past, making access to his property problematic.

Ms. Lisa Kaufmann, of 170 East Cornish Road, said that she purchased her house two years ago and that she was shocked that the Kings did not read their deed. When she purchased her property it was made very clear to her that short-term rentals were not allowed. She said that her realtor told her that short-term rentals reduces the values of surrounding properties. Ms. Kaufmann added that she paid for a certain zoning and she should receive that for which she paid.

Mr. Campbell asked if the Town Council initiated action regarding this. Mr. Rothrock said the ordinance was clarified in June 2018 and 6 months was spent in clarifying the ordinance. Mr. Rothrock advised that a section on short-term rental was added and a way to permit where the use is legal. Mr. Rothrock added that the adopted ordinance clarifies the term tourist home, adds short-term rental to the Permissible Use Table, and establishes some grandfathering regarding required parking.

Mr. Rothrock said the Board can reverse, affirm or modify his decision.

Mr. Helms made a motion to close the public hearing. Ms. Carter seconded the motion. All were in favor of the motion.

Ms. Carter made a motion to accept Mr. Spring's finding of facts as the Board's finding of facts, seconded by Mr. Dixon. All were in favor of the motion.

The Board determined the following facts:

1. The property in question, 169 Mockingbird Lane, is in a Blowing Rock residential zoning district which does not allow short-term rentals.
2. In 1982, the Scoggins sold the property in question to the Kaylors.
3. In 1985, Mr. Kaylor sold the property to Caldwell Savings and Loan.
4. In 1988, Caldwell Savings and Loan sold the property to the Cohens and the Cohns.
5. In 2004, the Cohns sold the property to the Kings.
6. There is no evidence to show that the Kaylors were using the property for the nonconforming use of short-term rentals prior to the effective date (March 13, 1984) of the Blowing Rock Land Use Code.
7. There is no evidence to show that after the effective date of the Blowing Rock Land Use Ordinance the Kaylors used the property for the nonconforming use of short-term rentals without ever discontinuing the nonconforming use for 180 days.
8. There is no evidence to show that after the Kaylor sale of the property to Caldwell Savings and Loan that Caldwell Savings and Loan used the property for the nonconforming use without ever discontinuing the nonconforming use for 180 days.
9. There is insufficient evidence to show that the Cohns used the property for the nonconforming use without ever discontinuing the nonconforming use for 180 days.

Ms. Carter said she understands short-term rentals and has some on her street. She added that she does not feel the Board of Adjustment can overturn the Town Council's decision, as this ordinance is in place for a reason.

Mr. Helms made a motion to affirm Mr. Rothrock's decision, seconded by Mr. Dixon. All were in favor of the motion.

Administrative Appeal 2018-02 Harris

Ms. Lisa Harris and Mr. Paul Armbruster were sworn in for testimony to the Board.

Mr. Rothrock reviewed the staff report. Ms. Harris and Mr. Armbruster, owners of 8866 Valley Boulevard, Caldwell County PIN#02 3 13, are appealing a Notice of Violation for short-term rental dated August 8, 2018. Mr. Rothrock explained the Land Use Code history as outlined in Administrative Appeal 2018-01.

Dr. Davant asked how the property is zoned. Ms. Harris responded R-15. Dr. Davant asked if short-term rentals are allowed in R-15. Ms. Harris said no.

Ms. Harris said that she is looking for a map amendment or zoning change; that she is not looking to be grandfathered. Ms. Harris said that she feels this location is almost contiguous to Main Street and that the area is mixed-use, with residential, the golf course and a restaurant in proximity.

Dr. Davant asked if the Board of Adjustment can make zoning amendments. Mr. Moseley advised that they cannot.

Mr. Rothrock advised Ms. Harris to get the neighbors to be part of a rezoning request. He added that process involves going before the Planning Board, then the Town Council and that he would walk them through the process.

Mr. Armbruster asked if they can request a variance. Mr. Rothrock advised no; variances cannot be granted for a use.

Ms. Harris said they have always been good citizens, they care about Blowing Rock and want to be in compliance. Mr. Armbruster said they are in constant contact with the neighbors and that this is a high-end property with a minimum tenant age of 27.

Mr. Helms asked if the neighbors rent their properties. Mr. Armbruster said no.

Mr. Rothrock said he could not say if a rezoning request would be approved. Mr. Armbruster asked if anyone had done this. Mr. Rothrock said one person tried, but was not approved.

Mr. Dixon made a motion to close the public hearing. Ms. Carter seconded the motion. All were in favor of the motion.

The Board determined the following facts:

1. The property is zoned R-15.
2. Short-term rental is not allowed in the R-15 zoning district.
3. The applicant is pursuing another route.

Mr. Dixon made a motion to affirm Mr. Rothrock's decision, seconded by Ms. Carter. All were in favor of the motion.

Administrative Appeal 2018-03 Park

Mr. Rothrock reviewed the staff report. Mr. and Mrs. Park, owners of 1411 Goforth Road, Watauga County PIN# 2817-47-1897-000, are appealing a Notice of Violation for short-term rental dated August 8, 2018. Mr. Rothrock advised that the property was annexed into the

Town in June 2013 at the Park's request in order to connect to the Town sewer system. Mr. Rothrock further advised this property was constructed in 2013; therefore, grandfather status does not apply. Mr. Rothrock again made reference to the Land Use Code history as outlined in Administrative Appeal 2018-01.

Mr. Joe Park and Mr. Lonnie Webster were sworn in for testimony to the Board.

Mr. Helms asked if the difference in R-10S and R-15 is the lot size. Mr. Rothrock confirmed.

Mr. Campbell asked if short-term rentals are allowed in R-10S. Mr. Rothrock said no.

Mr. Park thanked the Board for this opportunity to speak. Mr. Park told the Board that they live in Savannah, Georgia but are from Statesville, NC. He and Mrs. Park married in 1969 and always knew that they wanted a house in Blowing Rock. He explained that Mrs. Park had spent time here and loved it and that they wanted to build a house here for themselves, their children and grandchildren. He added that they bought the lot on Goforth Road from family (paying full price) and that they had over spent on site prep.

Mr. Park said that his builder applied for connection to Town sewer. Shortly thereafter he spoke with his next door neighbor, Mr. Lonnie Webster, and found out that his house is a short-term rental and thought this could be a way to offset expenses. Mr. Park engaged an agent in Boone to handle the rentals. The agent assumed he was located in Watauga County and short-term rentals are allowed there. Mr. Park added that his agent has requested that Watauga County send the occupancy tax, paid to them in error, to the Town.

Mr. Park said they want to continue short-term rentals as the property is too large for long-term rentals. Mr. Park said the house is built specifically to accommodate families and that he and his family use it once each month and for long weekends. He added that the short-term rentals have never caused a disturbance or inconvenience, they rent it about 17 times per year, the tenants are carefully vetted, and it is not a party house.

Mr. Park said it appears that his is the only house zoned R-10S and that they are currently in compliance with all city rules. Mr. Park said he wants to continue short-term rentals with the Board's permission and that he will 'un-annex' if necessary.

Dr. Davant noted that he is not in compliance with all the rules as he is violating the ordinance that prohibits short-term rentals. Mr. Park asked if he could 'un-annex'. Dr. Davant said he would have to 'un-hook' from Town sewer. Dr. Davant asked Mr. Rothrock if property must be annexed to be connected to Town sewer. Mr. Rothrock confirmed.

Mr. Lonnie Webster said he and his wife own Ada's Cottage at 1369 Goforth Road. Mr. Webster gave the Board guest books from Ada's Cottage for their perusal. Dr. Davant asked how his property is zoned. Mr. Webster said he is in the county, not in the Town. Mr. Webster added that the house next door was a long-term rental and it was a nightmare. Mr.

Webster said that short-term rentals must be kept up and looking good. He added that they have had one couple return each of the past 5 years and that they have many repeat tenants. Mr. Webster said that short-term rentals are good for Blowing Rock and some neighborhoods; that their experience has been very good.

Mr. Dixon asked if this property was zoned for short-term rentals. Mr. Rothrock said that when the ETJ was approved, the house was a short-term rental and that use can continue.

Mr. Webster told the Board that not all long-term rentals are good.

Mr. Park said it is ironic that short-term rental is allowed next door to him and that short-term rentals inconveniences no one. Mr. Park added that he understands laws and statutes and Boards that do what they do; that this is the Board of Adjustment's job. Dr. Davant said this is not this Board's job, that it is the Town Council's decision.

Mr. Dixon made a motion to close the public hearing. Ms. Carter seconded the motion. All were in favor of the motion.

Mr. Helms noted that Mr. Park is in the Town, but everyone around him is in the county. Mr. Park said that he did not realize he was annexed and he did not attend that meeting, adding that his builder did that.

Mrs. Gay Park told the Board that the property is located on the same road as the Blowing Rock Conference Center.

Mr. Tim Gentry asked why some people have Town water but are not annexed. Mr. Rothrock said some properties in Sunrise Cove have water service, but are not annexed. He noted that these customers pay double water rates and this was a policy decision made 30 to 40 years ago.

The Board determined the following of facts:

1. The property is zoned R-15.
2. Short-term rental is not allowed in the R-15 zoning district.

Mr. Campbell made a motion to affirm Mr. Rothrock's decision, seconded by Mr. Dixon. All were in favor of the motion.

With no further business, the Board adjourned at 7:05 p.m.

Dr. Charles Davant, Chairman

Tammy Bentley, Planning & Zoning
Support Specialist