

Pownal Board of Appeals
Administrative Appeal Hearing
August 1, 2018 ~ 7:00pm @ Mallett Hall

Approved
October 16, 2018

SUBJECT: *To consider the application submitted by Michael Albert, 400 Hodsdon Road requesting to appeal the decision of the Code Enforcement Officer regarding a Certificate of Occupancy issued for an accessory dwelling located at 390 Hodsdon Road (Map 7, Lot 20).*

Public Present: Arte Fayta, Jackie Reifer, Jon Morris (Selectman), Melissa Henes (Administrative Assistant), Liza Nichols (Planning Board), John Bowdren (Planning Board), Ryan Keith (CEO), Viana & Gabe DiGristina (property owners, 390 Hodsdon Road)

Appellant: Michael & Ginger Albert

Attorney for Appellant: Kristin M. Collins

1. Chairman Dick Hogue called the meeting to order, 7:02pm.
 - a. Board Members Present: Nicholas Cote, Tom Hall, Alice Rosenberg, David Steckler, Phil Wentworth
 - b. **MOTION:** It was moved and 2nd to move Nicholas Cote from Alternate to Voting Board Member for this hearing. All voted in favor.
 - c. Five members satisfy a quorum.
2. **MOTION:** It was moved and 2nd to approve minutes of April 17, 2018. All voted in favor.
3. *Dick summarizes the appeal:*
 - a. A building permit was issued to Vianna DiGristina from Ryan Keith on September 14, 2017, for a project described as: “19 x 34 Accessory Structure on the property to be utilized as finish space for office space presently and possible rental unit in the future. 865.5 sq feet of finished area Total” (EXHIBIT B)
 - b. Per our code book, (Sec 2, page 1) the definition of an Accessory Structure is “*A subordinate building or a portion of the main building, the use of which is incidental to that of the main or principal building. Examples include, but are not limited to garages, barns workshops and guest houses.” (building permit states 865.5 square feet)*
 - c. The definition (Sec 2, page 6) of an Accessory Dwelling is “A small dwelling, either attached or detached (unattached) which is part of an existing single family owner occupied home on the same lot and which is clearly secondary to the single family home. The dwelling shall have living, sleeping, sanitary, and kitchen facilities for the exclusive use of the unit occupants. The owner of the primary building may rent the accessory dwelling or the primary building owner may occupy the accessory dwelling and rent the primary dwelling. The dwelling will have only one bedroom and one bathroom. The dwelling can be no more than 625 square feet or 50% of the square footage of the primary dwelling, whichever is more restrictive” Only 1 accessory dwelling is permitted per lot. All current codes must be met and an Occupancy Permit must be obtained. Parking must be available onsite.”

- d. The Certificate of Occupancy issued June 21, 2018, listed the building as a “New Accessory Dwelling / Home Occupation (EXHIBIT A)
 - e. The Building Permit does specify that the building is going to be used as possible rental space. The Permit and Occupancy do not match the building use as per the definitions. (Building Permit says “accessory structure”, Occupancy Permit says “accessory dwelling)
 - f. The owners have advertised the space for rent via AirBnb confirming rental use (EXHIBIT C)
4. *Does the Board of Appeals have jurisdiction to hear this appeal?*
- a. This applies to Article 3, Section 11, page 15, 16) of the Pownal Land Use Codes
 - b. The date of the Certificate of Occupancy for this building was issued on June 21, 2018. This would meet the 60 day time period for filing per the Manual for Local Use Appeal Boards, see page 61. (appeal application was received at town hall with appropriate fee on July 12 = 21 days)
 - c. Public Notice was posted in all the appropriate places in a timely fashion (July 20, 2018) as well as being emailed to the town office, Selectmen, CEO and Planning Board. Emails were sent to the Appellant and their attorney, as requested. A copy of the agenda was mailed to the DiGristina’s. The Notes listed the hearing on the Pownal Page in their July 31 issue. (see attached)
5. *Does the appellant have standing in this appeal?* Dick asks the Alberts what their complaint or reason for filing this appeal?
- a. Michael Albert responded that this Air BnB is affecting their quality of life, with increased noise level and people driving on their driveway. “We didn’t move to Pownal to have a motel next door.” They also noted that they were worried about increased crime rate.
 - b. The Board agreed that the appellant does have standing as per page 65 in BOA Manual.
6. *Does the appellant have the right to appear before the board?*
- a. The Alberts filed the appeal application in a timely manner (see attached) and paid the \$250 application fee (see attached receipt).
7. *Appellant states case:*
- a. Michael Albert stated that he was under the impression that this was to be a home office and mother-in-law apartment. When he realized that it was being used as an Air BnB, he spoke with Ryan Keith, CEO, about this and didn’t feel like he received any satisfactory information. So he consulted a lawyer (Kristin M. Collins) instead.
 - b. Kristin Collins states: (also see her letter dated July 12, 2018)

- i. The Occupancy Permit should not have been issued because it doesn't match the building permit.
- ii. The building listed as a "dwelling" on the O.P. doesn't meet code, it is 865.5 square feet and an accessory dwelling can only be 625 sq ft or 50% of main dwelling. So this building is too big.
- iii. Using this building for an Air BnB is a more intensive use of the building, more people coming and going, more like a motel/hotel which is not permitted.
- iv. Neither the Building Permit nor the Occupancy Permit should have been issued – should have submitted a new building permit to accurately describe use.
- v. With the transient lodging made available to the general public, this building falls in the category of hotel/motel which is not allowed in the RA District. It would either need to go to special exception or would not be permitted at all.

8. *Parties to the action state case:*

- a. Gabe DiGristina noted that this building was constructed as multi-use space as indicated on the building permit. It is used as a home office for 1-2 days a week; family members stay for 10 weeks out of the year as well as visiting friends off and on. Other times, it is listed and rented as an Air BnB – some for 2-3 days and at other times, a whole week.
- b. Dick asks CEO why he had the Building Permit listing the building as a "accessory structure" and the Occupancy Permit listing it as an accessory dwelling/Home Occupation?
 - i. Ryan Keith, CEO: The applicants had been forthright right from the beginning of the process and outlined what the different uses were going to be for the building. (see attached Building Permit. I didn't look at the definitions since both were permitted uses. There doesn't seem to be anything in place for review of such matters, but I would change the permits to be compliant with each other. I try to be fair across the board in how I approach building permits.
 - ii. Dick: The Accessory Structure doesn't have a size limit per our code book; but the Accessory Dwelling does, 625 square feet. How does the 825 square feet that the building is fit?
 - iii. Ryan: There is a mechanical room and stairwell that do not add to the total square footage. Also the loft can only be measured to 5 feet of head room. You can deduct those measurements from the total square footage. The loft was not counted in as it was for storage and the stairway is

blocked. (Ryan reiterated that this was all above board and he makes his decisions as fairly as possible.)

- iv. Dick noted that the pictures of the building submitted with the application clearly shows a bed in the loft? Gabe and Viana confirmed, yes there was. Ryan stated that he did not add the loft in as “livable space” because of the pitched ceiling leaving not much left in measurement.
- v. Dick suggested that this hearing be postponed so that our CEO can take all measurements that were considered “usable space” and to exclude the space of the mechanical area, stairway, and portions of the loft that measured in height 5 feet and above. These measurements would be consistent with standards and our CEO should stay consistent with his practices. Although we trust and stand by our CEO, it would be in our best interest to have Ryan obtain these exact measurements with someone else accompanying him. Ryan said he could do that.
- vi. Kristin Collins noted that there are standards for measurements listed in the American National Standards. She also noted that the footprint of the building already exceeds 625, how will this affect the final decision and should we just correct the Certificate of Occupancy with correct measurements and not drag this out and adversely affect the DiGristina’s rental opportunities?
- vii. Dick: According to the definitions in our code book, this building can qualify as an Accessory Structure because “guest house” is one of the uses listed and there are no size limitations on an Accessory Structure.
- viii. K. Collins: What is the intention of the zoning ordinance listing guest house which could be anything where as an Accessory Dwelling states that it includes a bedroom, bathroom and kitchen. This should be a dwelling not a structure.
- ix. Gabe DiGristina noted again that they had been transparent in this process, it is a multi-use space, no other neighbors have had any complaints about any noise. He is very upset about this appeal and the actions of his neighbors that had at one time been good friends.

9. Testimony will be accepted from interested parties:

- a. Liza Nichols (Planning Board) noted that a “Dwelling” can be located in a “structure”.
- b. John Bowdren (Planning Board) noted that dwelling vs. structure isn’t as clear as it could be in this case.
- c. Ryan Keith noted again that he wasn’t aware of the difference, 625 was going to be close and really didn’t think one word was going to cause such a problem. He is happy to re-issue the permit to make things correct.

- d. Michael Albert noted that the whole dwelling itself can be only 625 sq ft, not just the living space.
- e. Jon Morris (Selectman) noted that there are 5 known Air BnB's in town at this time. This is something the town will need to address in the future.

10. Hearing closes at 7:17pm. The Board discusses.

- a. Dick noted that this building seems more fitting as a structure because of the multi-use factor – office, guests, rental. All the set backs have been met, there are no zoning issues. In the definition of a “dwelling” it's only use is a rental.
- b. K. Collins noted that it is still a dwelling because it is being rented and has a kitchen, bathroom and bedroom.
- c. Dick: It can really be either but we are finding that this best fits the definition and use of an Accessory Structure. Does the rest of the Board agree? Yes, all agreed.
- d. Dick refers to Kristin Collins letter, Page 2, #2 where it addresses zoning. Per our code book, both an Accessory Dwelling and an Accessory Structure are permitted in the RA District, see Section 7, Article 3 “Permitted Uses”.

Meeting opens to public, 8:42pm.

11. Rebuttal time for all parties

- a. Gabe noted that he brought his prints for the building. Ryan showed the spaces to be measured to the board and estimated that the total maximum of livable space would be 638 square feet, this estimate includes the staircase, which would need to be measured and deducted from that total:
 - Livable Space first floor = 586' (includes staircase)
 - Loft = 88'
 - Minus mechanical room = 36'
- b. K. Collins noted that the 2 uses are very different. This is a rental space and it is a dwelling unit because it has a bedroom, bathroom and kitchen which makes the distinction between it and an Accessory Structure. The building permit should be changed to Accessory Dwelling. Calling this a structure could compromise how many buildings a landowner could put on their property and call them “structures” since you can only have one primary dwelling per property.
- c. Liza Nichols (Planning Board) noted that the Board of Appeals does not set precedent.
- d. Alice stated that we are going by our code book and that is what we have to guide us.
- e. Dick noted that with BOA Powers and Duties we could put a condition on such as “no other structures can be built on this property”?
- f. M. Albert reiterated that the structure should be subordinate to the primary dwelling and used as overflow to the permanent structure. An Air BnB is like a motel.

- g. K. Collins reiterated that an Accessory Dwelling is the better choice here.
 - h. Ryan Keith stated that if the method of measuring the living space meets the square footage requirement, (using states consistent standards), that we could change the building permit. Whatever the Board decides, he will correct the permits so that they will comply with each other. He also stated that he would not recommend putting conditions on the decision.
12. MOTION / DECISION: Tom moves that based on the fact that the building permit was taken out for an Accessory Structure and met all the requirements for an Accessory Structure, this appeal should be denied. The motion was 2nd.
Dick amended: The CEO will amend the Certificate of Occupancy to state that the building is an Accessory Structure (not Accessory Dwelling).
- ALL VOTED IN FAVOR OF THE MOTION AND AMENDMENT.
13. Deliberation / finding of facts – see attached.
14. Meeting adjourned 9:30pm.

Respectfully submitted,

Kathleen A. Hogue