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Approved with changes: _____

Effingham Zoning Board of Adjustment
Meeting Minutes
October 14, 2021

Members Present: Jim Pittman (chair), Tim White (vice chair), Theresa Swanick, Nate Williams, and Mike Cahalane (alternate seated for absent Knute Ogren).

Others Present: Nate Fogg, Rebecca Boyden, Mark Galloway, Stephen Green, Miles Chvila, Carol Chvila, and Brian Taylor

Call to order at 7pm

Discussion of new chairmanship

At the prior meeting Mr. Pittman suggested someone else chairing the board as Ms. Swanick also chair's the Planning Board, which is permissible but not advisable. Mr. Pittman had asked if anyone else was willing to serve as chair. With no one volunteering, he offered to raise it at this meeting and was willing to serve. Mr. Pittman, a former chair of ZBA, said he recommended the change, especially as the current chair has expressed interest all along in not chairing.

MOTION: Mr. White moved that the board accept Jim's offer to serve as chair for duration of existing term. Seconded by Nate Williams. All voted in favor; it was unanimous.

Lakefront Landing Special Exception for boat storage yard – Application Review

Chair Pittman asked clerk Nate Fogg if proper notice had issued. Mr. Fogg confirmed published notice and abutter notices being sent on timely basis.

Chair asked the applicant to review the proposed project: to store boats from his marina operation.

Mr. White mentioned an earlier ZBA case of the applicant's Green Mtn Rd property that was a tear down replacement of a garage on a residential lot to be used for family purposes. This is another location that has had boat storage. Zoning Officer Blyden said was told the Green Mtn lot was used for personal boat storage, not for the business. He has purchased a second lot on Province Lake Rd for commercial boat storage, at issue in the application before the board tonight.

Mr. Cahalane offered that the issue of a Contractor's Storage Yard had come up with the Green Mtn Rd property by way of complaint when he served as selectman. He had asked the Zoning Officer to hold off on action since the Planning Board was contemplating updating that provision in the zoning ordinance, which is under discussion now by that board. He said the Green Mtn Rd lot is not a big lot and it probably moved away from casual storage into supporting the marina for storage. The applicant's intention as he sees it is to use the new lot for commercial boat storage and small lot will no longer support the marina.

The applicant said he buys and sells boats and has kept some on Green Mtn Rd and will move some of them or most of them off that smaller lot. Mr. Cahalane said he was aligned with Mr. White: if using the Green Mtn. Rd for personal use, that is okay. If using it to support the marina, that is a nonresidential use that should be regulated through another whole process.

Mr. Williams suggested the board focus on the application before the board tonight, not the green Mtn Rd property; if another ZBA application needs to be files that can be conveyed but proceed on the application at hand.

Mr. Pittman agreed but indicated that past practice is to be considered, if you've had nonconformity in similar situation, it is germane to weighing an application by same landowner.

Ms. Swanick said we were dealing with a business and there are two lots that support that business, and if one lot doesn't conform to zoning, maybe we can speak to both without making the applicant return for another whole application to deal with the other lot doing the same thing.

Mr. White said it is not judgment on the Green Mt Rd lot that has asked for relief.

Ms. Swanick said the other matter is that is does not seem to fit the "contractor" in the zoning ordinance. It's not a contractor storing his equipment or vehicles, but rather a storage facility in the business of storage.

Mr. White read from the ordinance: *Contractor Storage Yard* is outside storage of "owner-owned or leased supplies and equipment," as Ms. Swanick said, versus Warehouse/Storage Facility.

Mr. Cahalane noted the definition of Warehouse/Storage Facility says "a building." Ms. Swanick offered that that was envisioned when written but you can have a building to store boats or a yard to store boats so it could fall more closely into that category.

Mr. Pittman asked for any clarification from the zoning officer. Ms. Boyden said her original advice to the applicant has been to use Warehouse/Storage Facility, as it seemed a storage yard could be viewed as a 'facility', but the definition that said 'building' she backpedaled on that. At the Planning Board work session, it was suggested to amend 1035 to include Warehouse/Storage Facility to add "yard" to the title. She thought this was a good direction to go in and encouraged moving forward with that potential amendment.

Mr. Fogg reminded the board to accept the application as complete to move to further discussion.

Motion: Mr. Cahalane motioned to accept the application as complete. Mr. White seconded. All were in favor. Motion passed.

Mr. Pittman had a question for Ms. Boyden. Section 1035 has mention of setbacks but no such requirements for 1011, Contractor Storage Yard. Ms. Boyden indicated she thought it was because 1011 was not contemplating commercial use, it being like home occupation, and adjunct use to residential use. She read definition that it's "incidental to a contractor's building business." Implication is that is a different kind of home business. An electrical van or landscaping business vehicles used for the trade.

Mr. Pittman said, related to that, when he looks at 1035, the setbacks say 100 feet from the front. Mr. Pittman said that would seem a severe limitation. Ms. Swanick asked the size of the lot. Ms. Boyden said it makes sense to move activity back from the road, as it is with Campgrounds and Rec facilities.

Mr. White asked about a parking lot in a setback. Mr. Cahalane said parking should not be in setback. Mr. Pittman said the fact of setbacks required in 1035 would mean unless there is a Variance, it would be a pretty big impediment.

Mr. Cahalane offered that he did not agree Contractor Storage Yard is for primarily residential lots associated with plumber or electrician. It says: "The storage yard carried out by the owner or lessee of the shall be "incidental to a contractor building contracting business." He suggests the incidental nature here is the use would be incidental to the marina. He thinks the setbacks should be important on side and back due to abutters and give away the frontage toward the road. For board to consider.

Mr. White said one problem is the definition does state a contractor/building contracting business, it nails it down. But the Warehouse/Storage Facility says 100' and that's whoa. It is going to need hammering out wherever it goes.

Noted no abutters are present to oppose the application.

The applicant noted he tried to create buffer with setting large stones away from the front wall fronting the property. Mr. Cahalane said buffers are more vegetative, a visual barrier, a screening.

Ms. Boyden noted buffers are to block noise or visually. Rock walls are not a buffer for land use purposes. It means putting something in so you can't see what is going on – a row of arborvitae or such evergreen so it is visually buffered. It is designed to mitigate placing a commercial use in a rural residential neighborhood. She also said residential buffer in front is 50' everywhere. Driveway and septic field are okay, but no parking lot or other use.

Ms. Swanick felt the side and rear setbacks are 50' she thinks the front should not be less than 50' as well. She knows that is what is used for residential, and this clearly is not residential, but this also is clearly not a noisy commercial use.

Mr. Cahalane agreed that 50' all around would be a good compromise, consistent for what ZBA has done before. A row of vegetative barrier should suffice.

Applicant asked how to measure the property line for the front setback. From the property line. Ms. Boyden said Site Plan approval will be required by Planning Board for commercial use.

Mr. Pittman said that neither 1011 nor 1035 is perfect fit. Mr. Cahalane said the dilemma is that even if no perfect fit, we can get guide on setbacks from 1035, but if use Warehouse/Storage Facility, would need to come back from a Variance, because we have not advertised with the public for a Variance in this case. To use Contractor Storage Yard avoids that necessity to come back if it can be made to fit.

Mr. White said there would have to be a proper Variance process with using 1035 Warehouse/Storage Facility, but using Contractor Storage Yard would mean bending the definition. It's a question of which to do. He was interested in the Planning Board discussion of amending the zoning ordinance, which of these sections was under discussion. Ms. Swanick said the Warehouse/Storage Facility/Storage Yard, to include a yard that might be commercial storage vs incidental storage.

Mr. White asked how much it mattered if board shoe-horns this into Contractor Storage Yard? Mr. Cahalane said he did see it as incidental to the applicant's business. The boat storage is directly incidental to the marina business, no marina – no boat storage.

Ms. Boyden suggested Contractor Storage Yard actually doesn't apply in two ways as it stands right now: one is this isn't a building, the other is the reservation about the 100' setback for this use, which is for a building and may or might not be changed in the future for a 'yard.' So to try to fit this into Warehouse/Storage Facility is more difficult in this moment than to think broadly about Contractor Storage Yard, it just calls for establishing buffers. It says fencing and buffers may be required. There are fewer hoops to jump through, and it is what the applicant has asked for. Granting what the applicant asks for with some guidelines.

Ms. Swanick said it didn't seem as logical to her to use 1011 vs 1035. Mr. Williams countered that he can see it fitting into Contractor Storage Yard. Mr. Pittman said he is in agreement with Mr. Cahalane and Ms. Boyden, and asked whether residential setbacks should be used? Mr. Cahalane suggested 50' all around because it is a well-developed area. Future-proof the use to a degree; it could be another owner someday. He felt this way they were trying to blend the two sections.

Ms. Swanick suggested the setbacks relate to the criteria for a Special Exception that requires no diminishment of property values; setting a condition of 50' setbacks all around would go a long way to protecting adjacent property values. Mr. Pittman agreed and asked Ms. Boyden if there were any issues with sightlines with driveway. She said the driveway was approved by the state as well as her.

Mr. Pittman reviewed the criteria and the applicant responses from application for Sec. 904, issues could be adequately addressed with conditions of setbacks and visual buffer. This would allow, however flawed, to fit the section 1011 Contractor Storage Yard. Mr. Cahalane: Incidental to marina. Mr. Pittman read out the requirements of Contractor Storage Yard which would must be adhered to.

Deliberation: At 8:23pm, Mr. Pittman closed public input and moved into formal deliberation.

Mr. Cahalane mentioned condition for setbacks. Ms. Swanick suggested 50' setback on around. Mr. Cahalane and Mr. Williams agreed. Mr. White asked if too restrictive for use of parking. But may not be exact use in future. Mr. Pittman said this storage is only in winter, empty in spring-fall. Ms. Swanick said buffers mean it must be evergreen so it is effective in winter. Mr. Cahalane said again, this use may change, but if use is consistent still might go to site plan review again in future.

Motion: Ms. Swanick moved to approve the Special Exception under 904, and 1011 Contractor Storage Yard, with the condition for 50' setbacks on front, rear and sides and contingent upon site plan review. Mr. Williams seconded. Poll for votes: Mr. White-aye, Ms. Swanick-aye, Mr. Cahalane-aye, Mr. Williams-aye, Mr. Pittman-aye; it is unanimous.

Minutes: Cahalane motion to approve minutes of August 4, Mr. Williams seconds. All in favor. Cahalane motion to approve the minutes of Sept. 28, 2021, as amended to add Ms. Boyden to attendance, seconded by Mr. White. All in favor.

Adjournment: Mr. Cahalane moved to adjourn, seconded by Mr. Williams, all in favor.