

DORSET ZONING BOARD OF ADJUSTMENT

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Date: March 14, 2016
Hearing: #16-01
Applicant: Aerie Motel (Travers)
Appellant: Marilyn C. & Robert B. Mazur
Location: 158 Bowen Hill Road, East Dorset, VT
Request: Appeal of Zoning Permit 001-2016BU ~ Restaurant & Special Event Structure

Board Members Present: J. LaVecchia (Chairman), D. Wilson (by telephone), R. Stewart, B. Bridges, S. Jones, K. O'Toole
Board Members Absent: M. Connors, T. Rawls
Also, Present: Tyler Yandow (ZA), Joe O'Dea (Town Attorney), Merrill Bent (Mazur Attorney), Marilyn Mazur, Robert Mazur, Jane M. Bridges, Luanne Hardy, Robert Cahill, Christopher Ponessi (Travers), Brenda Travers (Aerie Motel), Rick Travers (Aerie Motel)

J. LaVecchia, Chairman, opened the meeting at 7:35 p.m. noting that the hearing was for an appeal submitted by Marilyn and Robert Mazur of zoning permit #001-2016BU ~ Restaurant and Special Events Structure located in the CI-1 zone.

M. Bent, representative for the Mazur's, stated that a *Memorandum in Support of Appeal* (copy available at the Town office) was submitted. J. LaVecchia noted that what was said at the PC meeting was not essential to ZBA function and M. Bent said she understood and agreed.

M. Bent reviewed the memorandum with respect to the project not being compliant to ZBL Section 6.22(b): M. Bent argued that the Aerie Motel application does not comply with ZBL Section 6.22(b)(15) ~ *A park, playground, or recreation building or center not operated by the State or municipality* ~ as the proposed structure would not be for public use, but for private events. M. Bent further argued that it would not comply with ZBL Section 6.22(b)(25) ~ *Restaurants, provided that all food and beverages are served to customers seated at tables or counters, inside or outside the building, but this shall not prevent a catering operation where food is sold and taken out for home consumption. Drive-up windows are not allowed* ~ as the Travers do not intend to

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operate a restaurant with all food and beverages to be served to seated customers. M. Bent commented that in looking at the Travers' application, there is not a permitted use under the ZBL's that would be appropriate for the CI-1 district. K. O'Toole questioned the comparison between recreational building and park/playground being a public place as a recreational building could be a gym ~ the ZBL says "or" not "and." M. Bent responded that it was an interpretation or the use of same language under the rule of construction. M. Bent also said that they did not consider this project as an accessory use. Discussion ensued regarding the deed which lists motel and conventions as a use with M. Bent noting that this would be a new building with a new use. R. Mazur commented that the proposal is not subordinate to the motel, but dwarfs the existing use and there is pending court action to enforce the deed restrictions as it is not directly related to the motel. R. Mazur noted that he has been a neighbor for eighteen years and never had any issues, but he felt that the noise, traffic and visual impacts would be objectionable with the proposed project.

Topics discussed were:

- Application fitting any of the permitted uses in the district
- Purpose of structure being an event location/wedding venue
- Intention, definition and flexibility of ZBL 6.22
- Location of property in both the CI-1 and A&RR districts

C. Ponessi of Mance Engineering (representing the Travers/Aerie Motel) explained that everything proposed is in the CI-1 district and the application fits two permitted uses under ZBL Section 6.22(b) – restaurant and recreational building. The facility will have a fully functioning kitchen in order to be able to serve meals to people sitting down along with additional tent space for standard wedding practices from April to October. He felt the use was in line with the deed restrictions and noted that the traffic would be arriving from Route 7, not passing the Mazur residence. C. Ponessi stated that the applicant will abide by the regular noise regulations (11:00 p.m.) and the proposal does require an Act 250 permit which reviews noise levels. The building will be insulated for noise. K. O'Toole asked if they would adhere to the sound rules for amplified music by closing the doors and windows and T. Yandow responded that they were not located in the village. R. Mazur stated that he was concerned about the noise, but also was concerned about the loss of property value to the 10 acre parcel he owns across the road from the motel. C. Ponessi said that in his opinion, the survey shows that the motel property is completely in the CI-1 district.

K. O'Toole asked C. Ponessi how this proposal was a permitted use and C. Ponessi responded that he had met with T. Yandow for an initial zone review. C. Ponessi expressed that the proposal was not exactly one use, but it actually fits/blends with two permitted uses: recreation building and restaurant. K. O'Toole commented that if they are two different things, it might be a mixed use and T. Yandow responded that typically mixed use is residential with non-residential use combined or commercial use with industrial use combined – the two uses have to be significantly different.

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J. O’Dea noted that that the application was submitted as a restaurant and event facility and a restaurant has many different meanings to different people. J. LaVecchia asked if there can be two distinct permitted uses on the parcel. J. O’Dea responded yes, he believed it could be, but the ZA made his decision that this was a restaurant that does events. K. O’Toole asked if it was appropriate to consider the deed restrictions and J. O’Dea said no, as it was not the ZBA’s jurisdiction. J. LaVecchia noted that the question to address was the definition of restaurant and J. O’Dea commented that the ZBL clearly prohibits fast food restaurants like McDonalds. M. Bent stated that PC stated that the project was not a restaurant and J. LaVecchia replied that the question for the ZBA was whether the project offends the definition of a restaurant. R. Mazur felt that this was not a restaurant at all as they will only prepare food at events.

R. Travers, owner of Aerie Motel, explained that they had tried to have the application be as transparent as possible with the proposal to add a building, a parking lot and kitchen facilities which add value to the property. The proposal was to be able to rent out the entire motel for events such as weddings, family reunions, etc. and be seasonal from April to October. R. Travers said that the kitchen will be available to serve prepared food. It was also noted by R. Travers that amplified music will be directed away from neighbors, the building will have insulated walls and screening with plants will be done to help restrict where people go. T. Yandow remarked that the CI-1 zone has many intensive permitted uses and has no requirement to go through permitting for noise. C. Ponessi did mention that the proposal does have to go through Act 250 and J. O’Dea agreed that all State criteria for restaurants will have to be met. R. Mazur felt that just having warm food does not make a restaurant and noted that he had not heard about any tents. C. Ponessi responded that the tents would be on the back patio for the caterers and having 80 spaces for parking was to prove that they could park cars safely. T. Yandow stated that the Town does not regulate the use of temporary tents.

J. O’Dea stated that under the ZBL, this proposal meets the definition of a permitted use as a restaurant and event facility – it has a kitchen, people attending inside with tables and chairs, and all the accouterments of a restaurant hosting events.

K. O’Toole moved and R. Stewart seconded to close the hearing at 9:00 p.m. Motion carried 6-0.

K. O’Toole moved and R. Stewart seconded to continue the meeting to a Deliberative Session at 9:02 p.m. until the Findings of Fact are available. Motion carried 6-0.

Respectfully submitted,

Nancy Aversano, Secretary

Town of Dorset ~ Zoning Board of Adjustment

Date 3/14/16

Regular Meeting X

Special Meeting

(Please Print)

Testifying

Name	Address	Representing	(Yes or No)
TYNIA YALOW	DORSET	Town	Y
JOE O'DEA	ARLINGTON	Town	Y
Memill Bent	Adington	B + M. MAZUR	Y
MARILYN MAZUR	East DORSET	MAZUR	N
ROBERT MAZUR	E. DORSET	MAZUR	Y
Jane M. Bridges	Dorset, Mass	Bridges	No
Luanne Hardy	Dorset	self	NO
Robert Cahill	Dorset (temp.)	-	NO
Christopher Piness	P.O. Box 1446 02255	Travers	yes
Brenda Travers	E. Dorset	self	No
Rick Travers	East Dorset	self	Maybe?

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Finding of Fact ~ ZBA Hearing #16-01
Appeal of Zoning Permit 001-2016BU

1. This matter involves the appeal by Marilyn C. Mazur and Robert B. Mazur of the decision of the Dorset Zoning Administrator to grant Permit No. 001-2016BU.
2. This matter came before the Zoning Board of Adjustment on March 14, 2016. Members R. Stewart, S. Jones, W. Bridges, K. O'Toole and J. LaVecchia were present. Member D. Wilson was present by telephone.
3. The Mazurs were present as were the applicants Mr. and Mrs. Travers. All offered testimony. Christopher Ponessi testified on behalf of the Travers. Tyler Yandow, the Zoning Administrator testified. Merrill Bent Esq. appeared for the Mazurs and Joseph O'Dea Esq. appeared for the Zoning Administrator.
4. We rely solely on the filed application and the testimony presented to us at our hearing. We do not consider the findings of the Planning Commission or the comments made in the course of their hearing because we are not called upon to decide any of the issues dealt with in that hearing. We are considering only the determination reached by the Zoning Administrator.
We find that the portion of the Traver's parcel involved in this project is within the CI-I district. We find that the Mazur's property is in the AR&R district.
5. We find that the proposed building will be used to serve food to patrons seated at tables who have been invited to the facility for a particular occasion. The facility will have a kitchen and the food will be served from the kitchen although it may have been prepared elsewhere. The occasion may or may not be directly related to patrons of the motel. The occasion may be a wedding or another type of social gathering. The facility will not be open to the general public or open at regularly scheduled times. The facility will be operational from April to October when the motel will be open.
6. Section 6.2.2 of the Bylaw lists permitted uses in the Commercial-Industrial One District. Subsection b requires site plan review and # 25 permits Restaurants and reads: "Restaurants, provided that all food and beverages are served to customers seated at tables or counters, inside or outside the building, but this shall not prevent a catering operation where food is sold and taken out for home consumption. Drive-up windows are not permitted."
7. We find that the proposed use meets the fundamental condition imposed by the Bylaw: it will serve food to customers seated at tables or counters. We find that the definition does not preclude a facility that accommodates caterers. We find that the definition does preclude restaurants where customers simply come and pick-up food to be eaten elsewhere. We find no requirement that the facility be open to the general public or open at regularly scheduled times.
8. For the above reasons we affirm the action of the Zoning Administrator.