

**MEETING OF THE ZONING BOARD OF APPEALS
TOWN OF DUNKIRK MAY 25, 2022
INTERPRETATION DECISION: SHORT -TERM RENTALS IN THE R-1 DISTRICT**

The Town of Dunkirk Zoning Board of Appeals held a Zoning meeting at 5:00 p.m. on Wednesday April 25, 2022 at the Town Hall, 4737 Willow Road, Town of Dunkirk with Scott Pagano presiding as Chairman.

PRESENT: Scott Pagano, Michael Miller, Priscilla Penfold, Thomas Tarnowski, and Ken Tarnowski

ALSO, PRESENT: Supervisor Richard Purol, Councilman Juan Pagan, Zoning Board Alternate Mike Bohn, Sue Hazelton, MaryAnn Town, Carter Town, Joe Muscato, Jay Warren, Barbara Warren, David Maternowski, Kim Maternowski, Anthony Dolce, Phil Leone, Ericka Strychalski, Cheryl Dzduduch, Jerry Dzduduch, Linda Joseph Esq., Alicia Rod, Esq., Bob Price, Mary Price, Colin Knoer, Lisa Briggs, and Bill Foley.

The Meeting was called to order by Chairman Scott Pagano at 6:30 p.m. with a pledge to the flag. Chairman Pagano asked everyone to remain standing for a moment of silence for all the tragedies and violence, as well as the loss of Town Board Member, Robert Penharlow.

Chairman Pagano stated that the purpose of the meeting was to make a determination on an appeal of the code enforcement officer's interpretation of a short-term rental operating at 5184 woodlands dr. in the Town of Dunkirk. This meeting was posted in the observer on May 19th, 2022. An official affidavit will be on file in the Town Clerk's Office. He further stated that the Zoning Board would not be hearing any public comment, the meeting would be for the purpose of board discussion and voting. He thanked both parties for the time and effort that has been put into this matter. Both sides have been thoroughly reviewed and discussed by the Zoning Board before making our decision. Both parties provided abundant evidence for consideration.

Chairman Pagano asked Zoning Board Members if they had any statements that they would like to say.

Member Penfold stated that she wanted to read a statement that she prepared: "The seemingly simple task of applying Town of Dunkirk Zoning Law to the VRBO on Woodlands Dr. has not been an easy one. Having read and listened carefully to Mr. Knoer representing the Woodlands Dr. residents and the Law firm of Schroder Joseph & Associates, representing Ms. Friedman, owner of the VRBO, the issue was clearly addressed by both parties. The information that I have is, a formal letter of complaint was received from Mr. Knoer on September 17, 2021. CEO, Ryan Mourer addressed the complaint on October 17, 2021 at the Town of Dunkirk Board Meeting. He stated "... I am not going to act on this. That I don't feel the language gives me power to act on it and stop what she is doing." (P. 7 of Transcript of October 19, 2021 minutes). The Transcript of this October Meeting is the same as or is equivalent to a written decision by him. Not to ignore the complaints of the residents concerning noise, trespass, litter, and other nuisances that may fall under penal law but are not included in the local zoning law. Going back to the Town of Dunkirk Zoning Law there is no question, in my opinion, the structures on Woodlands Dr. meet the definition of a single-family dwelling. However, Town of Dunkirk Zoning Law does not stop there. Further consideration then comes to the definitions in the Zoning Law definitions of "Family" but the clearest is: Family definition **"4)-d)-VI) the group is not transient or temporary in nature."** The residence in question is advertised as a vacation home, thus in my opinion, is temporary in nature. In my opinion CEO, Ryan Mourer's decision is not in keeping with the Town Zoning Law. I find that the property in question is a violation of the Town of Dunkirk Zoning Law."

Chairman Pagano then began to read the written decision prepared by the Zoning Board:

“The Zoning Board has decided that the Code Enforcement Officer’s interpretation of a short-term rental operating in a R-1 residential district to be incorrect. We as a board disagree with the Code Enforcement Officers interpretation that the language was not clear enough to act on. We think the language in the Zoning Book is clear enough. Specifically, under the definition of family it specifically points out that “the group is not transient or temporary in nature.” (Pg. 133) The groups that are renting from Ms. Friedman and occupying this residence are temporary non-permanent occupants.

The Zoning Board also thinks that another part that supports our findings is under article 183 section 9 under “Interpretation of permitted uses- When a use is not specifically listed as ‘permitted use’, ‘permitted use with site plan review’ or ‘permitted use with special permit’ within any zoning district, it shall be assumed to be a prohibited use unless it is determined, in a written decision by the Zoning Board of appeals, that said use is similar to permitted uses, meets the intent specified in the Zoning Law and is not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the municipality.”(pg. 124) With the evidence provided from The Knoer Group it is clear that this has become both a nuisance and menace to the residents in the Woodlands neighborhood. This community is a private lakefront community with houses in close proximity to each other. The everchanging occupants at 5184 Woodlands Dr. have caused a disruption to the tranquility of the area. Under this section it also clearly states that if a use is not specifically named it is then considered prohibited.

The Zoning Board wanted to address the time barred issue raised by Ms. Friedman’s Attorney. Under Article 183 section 3-part A the Zoning Code states that an “interpretation- upon appeal from a decision by an administrative official, the Zoning Board of Appeals shall decide any question involving interpretation of any provisions of this local law. Such appeal shall be initiated within 60 Calendar days of adverse decision”.(Pg. 122) While Ms. Rood argued that the time frame of this matter was not within the 60-calendar day requirement, the Zoning Board disagrees. An official timeline of this matter is as follows: A petition circulated in August and was presented to the Town Board at the August 17th 2021 meeting; this petition can be found in the meeting minutes. It was then on September 17th 2021 that a complaint from the Knoer Group addressed to the Code Enforcement Officer was received. This letter requested that “pursuant to Article 184(1) of the Zoning Ordinance that you as a Zoning Enforcement Officer undertake an investigation of the operation of a commercial short-term rental property at 5184 Woodlands Dr. which is alleged to violate Article III of the Zoning Ordinance and make a report of your findings to the Town Board.” (The Knoer Group Pg. 2) The Code Enforcement Officer did exactly that at the October 19th Town Board Meeting. At this meeting the Code Enforcement Officer stated that he felt the code was too vague. This verbal statement that was transcribed in the meeting minutes is the functional equivalent of a formal written determination. This is the first official interpretation. The Appeal of the Code Enforcement Officer’s interpretation was then received on November 20, 2021. The Zoning Board thinks that given this timeline of events; the time bar argument does not have any validity in this matter. The Zoning Board appreciates the time and effort all parties have put into this matter. Thank you.”

Chairman Pagano called for a vote on this matter:

Chairman Pagano stated “I am voting tonight in favor of the Woodlands residents based on the following of my interpretation of the Zoning code definitions and findings by review of the Zoning Board of Appeals of a short-term rental operation in an R-1 district located at 518 Woodlands Dr.

1. These rentals are non-permanent in nature with a constant change in occupants – therefore being a nuisance to the safety and welfare of the surrounding neighbors.

2. Any use not specifically permitted is prohibited unless the Zoning Board of Appeals gives a written decision permitting the use. **Section 183 #9 Permitted use interpretation.** Also, a short-term rental operation is not an allowable use in an R-1 District.
3. Also looking at the definition of family, it states the following along with other items within the definition on **Page 133 Section 4-D. Children residing in the household are enrolled in a local school. Members are employed within the area and the household has been living together as a unit for a year or more in the dwelling or near other dwelling units. The group is not temporary in nature.**

Member Penfold stated that her above statement was her vote on this matter.

Member Mike Miller stated "My interpretation of the Town of Dunkirk Zoning Book, would appeal the Code Enforcement Officers decision and therefore would prohibit short term rentals in the R-1 District. My decision is based on the following:

Pg. 4 Section 12 Permitted Uses: Permitted use is a Single-Family Dwelling.

Pg. 132 The definition of "**Dwelling: The word dwelling shall not include boarding houses or rooming houses, tourist homes, motels, hotels, or other structures designed for transient residence.**"

Pg. 132 Dwelling, Single Family; A building containing 1 dwelling unit designed or used exclusively for occupancy by family.

Pg. 133 The definition of "**Family: Criteria – 4) D. The group is permanent and stable. Evidence: VI: The group is not transient or temporary in nature.**"

Member Thomas Tarnowski stated "During the past several months I have listened and learned about Airbnb and VRBO in our R-1 District in the Town of Dunkirk. In this case I thought and looked at both sides of the argument. Thinking that the neighbors had no right on saying who stays on Ms. Friedman's property. It is her property and her privacy. I tried to understand the interpretation and definition of Single Family Dwelling in the R-1 District.

Family:

Such as a group that is permanent and stable.

The presence of minor children regularly residing in the household who are enrolled in a local school.

A group that is not transient or temporary in nature.

Dwelling:

A building designed exclusively as a residence or sleeping place for one or more persons. The word dwelling shall not include boarding houses, rooming houses, tourist homes, or other structures designed for transient residents.

So, with that determination and taking in all the considerations of all the hearings, I believe short term rentals are not a residence; that it is a business. Offering transient lodging whose stay is temporary in nature. With that being said, I am voting on behalf of the Woodlands residents that short term rentals, AirBnB, and VRBO should not be allowed in the R-1 District in the Town of Dunkirk. Which is also stated in the Zoning Ordinance **183 Section 9: Interpretation of Permitted Uses – when a use is not specifically listed as a permitted use, permitted use with site plan review, or permitted use with special permit within any zoning district it shall be assumed to be prohibited use unless it is determined in a written decision by the Zoning Board of Appeals.**

Member Ken Tarnowski stated that while he did not prepare a written statement, he wanted to share his thoughts on the matter. He stated that the only thing he had to say was that the R-1 District was classified as a Single-Family Residence. Any Residents there either go to school there, reside there, or pay taxes there. They do not make a profit off of their home. He further explained that you can let

people stay at your home but you cannot make a profit off of it. Member Tarnowski said that you cannot rent your home on a weekly basis but can on a monthly basis. Based on everything he stated above; he voted in favor of the Woodlands residents, that a short-term rental was not allowed in a R-1 District.

Based upon the above statement's Chairman Pagano proposed a resolution that stated the Zoning Board of Appeals in the Town of Dunkirk found that the interpretation that the Zoning Officer had previously issued was incorrect and that short-term rentals are not a permitted use in the R-1 District. The resolution was duly moved by Member Miller and carried in a roll call vote.

AYE:

Chairman Pagano
Member Miller
Member K. Tarnowski
Member Penfold
Member T. Tarnowski

NAY:

ADJOURNMENT:

A motion was made by Chairman Pagano to adjourn the meeting. The motion was seconded by Member Miller and carried. The meeting was adjourned at 6:50 p.m.

Respectfully submitted,

Kyle Coughlin
Secretary to Zoning

APPROVAL OF MINUTES DATED May 25, 2022

Short Term Rental Interpretation Hearing

Due to minutes of above meeting being mailed to all members of the Zoning Board of Appeals
I the undersigned do hereby approve said minutes as mailed, or disapprove with comments below.

Signed 

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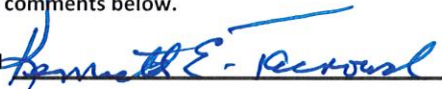
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