

M E M O R A N D U M

TO: Mr. Mark Maroon, Chair, Scarborough Zoning Board of Appeals
Members, Scarborough Zoning Board of Appeals

FROM: John Delahanty

RE: Appeal No. 2438 - Miscellaneous Appeal of The Lighthouse Inn to convert the Inn from one nonconforming use to another; and
Appeal No. 2439 - Miscellaneous Appeal of The Lighthouse Inn to expand a nonconforming structure in the R4A Zone

DATE: October 12, 2011

Mr. Maroon, Members of the Zoning Board of Appeals,

I am unable to attend tonight but for 63 years I've been either a summer resident, a permanent resident or property owner on King Street in Pine Point. I'm very familiar with the history of the Lighthouse Inn. For years the proprietors have run a good business, but during most if not all of these years, the building(s) as well as the use have been nonconforming uses and structures in the R-4A zone. Today the present owners are seeking a Miscellaneous Appeal to expand significantly the nonconformities on this nonconforming lot. Given the multiple proposals over the past several years to expand, enlarge or increase the nonconformities in terms of space, bulk and use, including the present proposal, this Board should review this proposal pursuant to the requirements for a Variance under Section V, B, 3 of the Town's Zoning Ordinance. A review pursuant to a Variance appeal would find that such an appeal should not be granted since there is little doubt that a reasonable return is available to the property owners without the granting of such an appeal.

However, as noted, notwithstanding the various proposals that have been suggested previously for the Inn, the applicants come before this Board for a Miscellaneous Appeal from restrictions on the nonconforming uses of land and buildings pursuant to Section 3, F of the Ordinance.

The Ordinance provides in Section III, F, 1 that an appeal from restrictions on the nonconforming use of land, buildings or structures may not be approved by the Board if the impact and affect of any such enlargement, extension, expansion or conversion to another nonconforming use is substantially different from or greater than the impact and affects of the present nonconforming use before the proposed enlargement, extension or expansion.

The present structures and use are nonconforming including in terms of space, bulk, net residential density and net residential acreage. There is no other nonconforming

structure or use in the R-4A zone in Pine Point that would have such high net residential density or where the structures would be so substantially altered. There is a substantial difference in changing from a seasonal to year-round use and structure; and in changing from one owner to multiple owners. I'm sure other opposing these appeals will speak to the impacts and affects of the proposed plan and how they are substantially different than the present nonconforming use.

I fully understand the need for zoning ordinances to allow nonconforming uses. There has been a suggestion that the proposal is "less" nonconforming than the existing use. Such cannot be found given the proposal. In fact, there is the proposition that nonconforming uses, at some point, should be extinguished. While Scarborough's Zoning Ordinance, does not have, I believe, a provision that provides for so-called "apportionment" whereby after a certain number of years the nonconforming use is extinguished based upon the fact that the proprietor would have received a reasonable rate of return during the apportionment period, nonconforming uses at some point should be extinguished. While the Town need not extinguish this nonconforming use, there are no grounds to grant this Appeal to provide for such a substantially different nonconforming use.

You have a number of factors to review in connection with this appeal. As noted above, I believe there is a logical argument that this appeal should be a Variance appeal and not simply a Miscellaneous Appeal. Under either scenario, however, these appeals should be denied.

If the proprietors wish to create a less nonconforming use, they should scale back the proposal and sell the property for a use that would be conforming in the R-4A zone and not attempting to shoe horn another proposal through the approval process by suggesting the proposed substantial change is "less" nonconforming. It isn't.

Thank you for your consideration.

Respectfully submitted,
John Delahanty