

EDMOND G. COOGAN LAW OFFICE, P.C.

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EDMOND G. COOGAN, ESQ., 1984-2001

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March 9, 2021

Ross P. Seavey
Building Commissioner/Inspector of Buildings
Zoning Enforcement Officer
Town of Tisbury

VIA EMAIL ONLY

Dear Mr. Seavey,

I am writing officially in response to your email of March 5th, 2021 to myself as counsel to the Goldstein family, and Joshua Goldstein, along with copying Laura Barbera, the administrator to the Zoning Board of Appeals. We had several correspondences from that email, and I wish to now take the time to further explain our position, again in the hopes of achieving what I would assume to be, the common goal.

The issue at hand stems from the Mansion House's proposed use of the property located at 10 & 12 Cromwell as additional parking for the Mansion House operations. You initially objected to the use of this lot as parking on the grounds that a stand-alone parking lot is not a permitted use under the zoning by-laws, and is therefore a prohibited use. We had several communications following your stance on the matter, and after a review of the zoning by-laws and the existing permits for the operation of the Mansion House, a proposed solution was offered. In our February 11th, 2021 application to the Zoning Board of Appeals (a copy of which is attached hereto), we explained that the by-laws specifically permit the operation of a Hotel with four (4) stated conditions, one of which being the availability of parking within one quarter of a mile from the site. The application therefore sought to amend the existing permit, to allow the use of this parcel, for such parking. This is clearly within the parameters of the by-law.

You have stated repeatedly that your goal in this situation is to ensure, as is your job, that there are no zoning violations. By amending the special permit, under the applicable by-law, that basis is covered.

That application has been submitted to the Zoning Board of Appeals, and we are currently on the agenda for a hearing on April 8th, 2021. As the zoning enforcement officer, you are well within your rights to attend that hearing, and explain how the proposed request, does not meet the applicable by-law. To date, you have not taken any position on that issue, only to state in an email that you believe the intent

of that by-law was to provide "Town" or public parking, within a quarter mile of the site. That is not stated anywhere within the by-law.

You referred the parking lot to the Martha's Vineyard Commission on March 2nd, under Section 3.1h of the MVC checklist, "Parking 10+ vehicles." You have taken the stance that the use of the property as a stand-alone parking lot is not a permissible use. The owner has not applied for any permit for a stand-alone parking lot. The intention under Section 3.1h of the MVC checklist was not designed for reviewing parking which is adjacent to and part of an operation, but for a review of a stand-alone parking lot, which is not permitted under the Tisbury Zoning By-Laws. Therefore, the MVC has no authority to approve or deny a project which doesn't fit within the local by-laws. As such, the referral to the MVC is without merit or validity.

The avenue therefore, to accomplishing what you have stated is your goal, ie. zoning compliance, is through the modification to the existing special permit. That should be a straightforward process, retained at the local level, without the necessity of the Martha's Vineyard Commission.

In the process of this discussion, you have also taken the position that this property has merged by operation of law, with the abutting property. You have taken this position based on an opinion of "common control" between the entity that owns the Inn, and the entity which owns the vacant lot. I have explained to you my experience with this issue, and also forwarded you several documents for your review. I further explained that I was not going to deed the properties into the same entity until you confirmed that merger was NOT an issue. I made that statement specifically for the purpose to avoid any issues in that regard.

Your statement regarding "common control" is in reference to what was known as "checker boarding" properties. That was a practice commonly undertaken when common owners of abutting properties would place title in separate entities knowing a zoning change was coming, and prior to such going into effect, in an effort retain the grandfathering provisions of M.G.L. Chapter 40 Section 6. Most often that was done through the use of nominee or realty trusts, with different names, but the beneficiaries were the same. Therefore, ownership and "control" were the same. That though is simply only a part of the doctrine of merger. Before you even get to that part of the analysis, you have to first find that the adjacent lots have merged. In order to do so, the lots must be held in common ownership at the time of a zoning change. The lots in question remain in separate ownership, and certainly were not held in common ownership at the time of the creation of the B1 zoning district. The misconception of the doctrine of merger is that if you acquire undersized abutting lots, that they automatically merge once they are placed in common ownership, or as in your suggested belief, common control. That is not accurate, and is has been litigated ad nauseum. The lots must be in common ownership at the time of the adoption of new zoning, which would then render them undersized. I sent you a legal opinion, and a supporting letter confirming the same from First American Title Insurance Company, a copy of which is again attached hereto. Your email of Friday March 5th at 5:37pm states, in pertinent part, that my "legal opinion is based on an entirely different fact pattern..." In the case I referenced in my letter, the question was whether an undersized lot acquired by an abutter after a zoning change, caused a merger. That is the exact same fact pattern as what we have in front of us, with the exception of course that we have not acquired title in the same entity. First American's confirmation letter states:

"Since the lots were in separate ownership at the time of the zoning change, the later acquisition of Lot 6 should not affect the status."

10 & 12 Cromwell were in separate ownership from 9 Main Street when the B1 zoning was changed, or in this case instituted. The later acquisition of 10 & 12 Cromwell, by control or by common ownership, is irrelevant. Further, MGL Chapter 40A Section 6 applies to vacant property. As you are aware, 10 & 12 Cromwell Lane contained structures until just recently. The mere removal of those structures does not negate the fact that construction on an undersized lot retains that lot's buildability. Of course if a later zoning change were adopted, such change would apply to a now vacant lot.

These lots have not merged.

I understand from your March 5th email, that your intention was to create an avenue to approve the proposal to utilize the Cromwell lot for parking. That intention is accomplished through the Zoning Board of Appeals process. Accomplishing that same outcome through your stated opinion on merger, is an untenable outcome for the owners. First and foremost as explained above, the lots have not merged by operation of law. In order to merge title, a new lines survey would have to be completed, showing the entirety of the newly created lot, signed off on by the Planning Board. Then the two entities could convey the newly created lot into one of them in a singular deed. Merely conveying title to two parcels does not merge them, the new lot must be created on a plan. If the lots were legally merged, the parcels at 10 & 12 Cromwell Lane, would no longer be a buildable lot. The owners recently paid \$769,000.00 for the acquisition of this property. The Town would have to re-assess this lot as unbuildable, and combine the taxation into one parcel, dramatically reducing the taxes generated by this property. The owners would also thus have no ability to utilize this lot in any other use, or to build separate and apart from the Inn property.


The Goldstein's have a vested interest in accomplishing two goals:

1. They wish to utilize 10 & 12 Cromwell Lane as additional parking for the operation of the Inn. This can be accomplished through the pending Zoning Board of Appeals application.
2. They wish to remain an active partner with the Town of Tisbury in providing an essential service to the Town. They should not be placed in a position of having to argue an illegal taking of their property.

If the true objective in this exercise is to find an avenue toward meeting the zoning requirements, and that has been presented, why is the Town threatening to deprive the property owner of their property rights, and thus setting up a potential lawsuit? The lots have not merged and therefore the tax benefit to the Town stays the same, and the property valuation stays the same to the owner. Alternatively, the Town loses a valuable piece of property off the tax roll and creates a lawsuit for an illegal taking. This simply makes no sense.

Thus far you have provided no legal basis for your position, and in fact have stated that you will not disclose the advice from Town Counsel. I urge you, as the Building Official, to reconsider your position. We should work together toward resolving the zoning issue, and move on.

Truly yours,



Geoghan E. Coogan, Esq.
Edmond G. Coogan Law Office, P.C.

RECEIVED

Certified by Town Clerk:

FEB 11 2021

Filing Fee:
(\$135.00) *pd JWR*

J. Hillary Conklin
Tisbury Town Clerk

Case # 2419

COMMONWEALTH OF MASSACHUSETTS - TOWN OF TISBURY

PETITION TO THE ZONING BOARD OF APPEALS

1. *Petitioner/Appellant (Owner)*
(Please See #8 below)

Name: *Tisbury Inn Realty Trust*
Mailing Address: *PO Box 428*
Vineyard Haven MA

clo
Email: *cooganlaw@gmail.com*
Home #:
Work #: *508 693 3200*

Signature
[Signature] *asc*

2. *Property:*
10-12 Cromwell Lane

Registry of Deeds, Book *1498* Page *1049*, or Land Court #
Tisbury Assessor Parcel # *7F* *15, 16.1*
Location (Street & Number) *10-12 Cromwell Lane*
(Brief directions to property)

3. *Property Owner:*

Name and Address: *Same*

Signature:

(By signing this petition, the property owner also authorizes the Board's entry to the property for inspection purposes.)

4. *Nature of Application (Circle one and complete):*

- (a) I am requesting a special permit for: *see attached*
or
(b) I am requesting a variance from:
or
(c) I am appealing the decision of the Building/Zoning Inspector or Board
Dated _____ for _____

5. Petition is made under the Zoning By-law, Section(s) *05.12.02*

6. Attorney Name, phone # & email: (if applicable): *Geoghan E. Coogan Esq.*
cooganlaw@gmail.com *508 693 3200*
7. Agent Name, Address, phone & email (if applicable):

8. ****If petitioner is not the property owner (i.e. renter in a leased building), written authorization from the property owner must be submitted in writing with this application. Contractors, surveyors, etc. are to be listed under #7 (Agent).**

9. Petitioner is advised that proceedings and requirements of the ZBA are governed by statutes of the Commonwealth, Tisbury Zoning By-law, and Board of Appeals' Rules and Regulations (copies available for inspection at the Town Clerk's office). Consult those documents for information and requirements. Under the Tisbury Zoning By-law, Special Permits and Variances are "exceptions," and the petitioner must evidence exceptional and appropriate circumstance(s) to warrant consideration.

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EDMOND G. COOGAN, ESQ., 1984-2001

GEOGHAN E. COOGAN, ESQ.

VIRGINIA N. COOGAN, ESQ.

February 11, 2021

Town of Tisbury
Zoning Board of Appeals
PO Box 1239
Vineyard Haven, MA 02568

RE: Special Permit
Case #2089

Dear Board Members,

The Tisbury Inn Realty Trust is the owner of the property located at 10-12 Cromwell Lane. The Trust is making an application to the Zoning Board of Appeals for a modification to Special Permit Number 2089, which governs the operation of the Mansion House.

Section 05.12.02 of the Tisbury Zoning By-Laws states specifically "In Business District 1 only" the operation of a Hotel is governed by the provisions of thereof. Pursuant to this section, the operation of a Hotel has four (4) required conditions:

1. "such use does not significantly conflict, in size or appearance, with existent uses."
2. "additional parking requirements can be accommodated within one-quarter (1/4) mile of the site."
3. "such use would not significantly increase traffic congestions or hazards."
4. "the Board of Health determines that provisions for wastewater disposal are adequate."

As the Board is aware, the Mansion House has been in existence for many years. The current request for a modification is solely for the purpose of expanding the parking availability for the guests and staff of the operation. The Trust recently acquired the abutting property located at 10-12 Cromwell Lane and is proposing to add parking to that site in conjunction with the existing use of the Hotel operations.

The Tisbury Zoning By-Laws do not allow a stand-alone parking lot. The application in front of you is not a request for a stand-alone parking lot, but rather "additional parking" for the operation of the Hotel. Section 05.12.02 specifically states as a condition to the operation of a Hotel, that such additional parking requirements "can be accommodated within one-quarter (1/4) mile of the site." This property directly abuts the Hotel, and as such fits that criteria.

In the course of investigating the process for approving this use, it has been suggested by the Building Official that this request is not appropriate on two grounds.

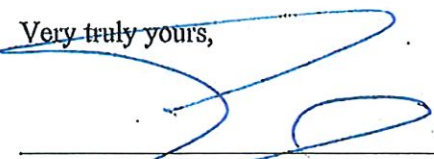
First, the building official cites that this By-Law is interpreted to mean that there is adequate available "public parking" within one-quarter (1/4) mile of the site. The By-Law says nothing about available "public parking." That "interpretation" is adding a definition to the By-Law which is not written, and therefore incorrect. Again, it is known and has been a topic of discussion for years in Tisbury that a stand-alone parking lot is not permitted because the By-Laws don't allow for that use, and if the By-Laws do not allow a particular use, then such use is a prohibited use by its very exclusion from under the By-Laws. Language cannot be added to a By-Law that simply does not exist. If a use is not specifically permitted under the By-Laws and therefore prohibited by nature of such silence, the same logic applies that you cannot simply add to a definition with unwritten language. Further, even if that language were to be part of the definition in this By-Law, there is no adequate public parking within the Town of Tisbury. Hotel guests and staff that utilize public parking are in fact taking away available spaces for guests of our Downtown area, retail stores, restaurants, and municipal services. The additional parking will alleviate the already congested parking in the Town of Tisbury.

Second, the building official incorrectly opines that the situation we are addressing is only in the B2 District, and governed by the exception in By-Law 07.07.03. In fact, Section 05.12.02 leads in its definition that it applies "In Business District 1 Only", emphasized in the By-Laws by being underlined as the heading to that very By-Law. Section 07.07.03 applies to Business District 2.

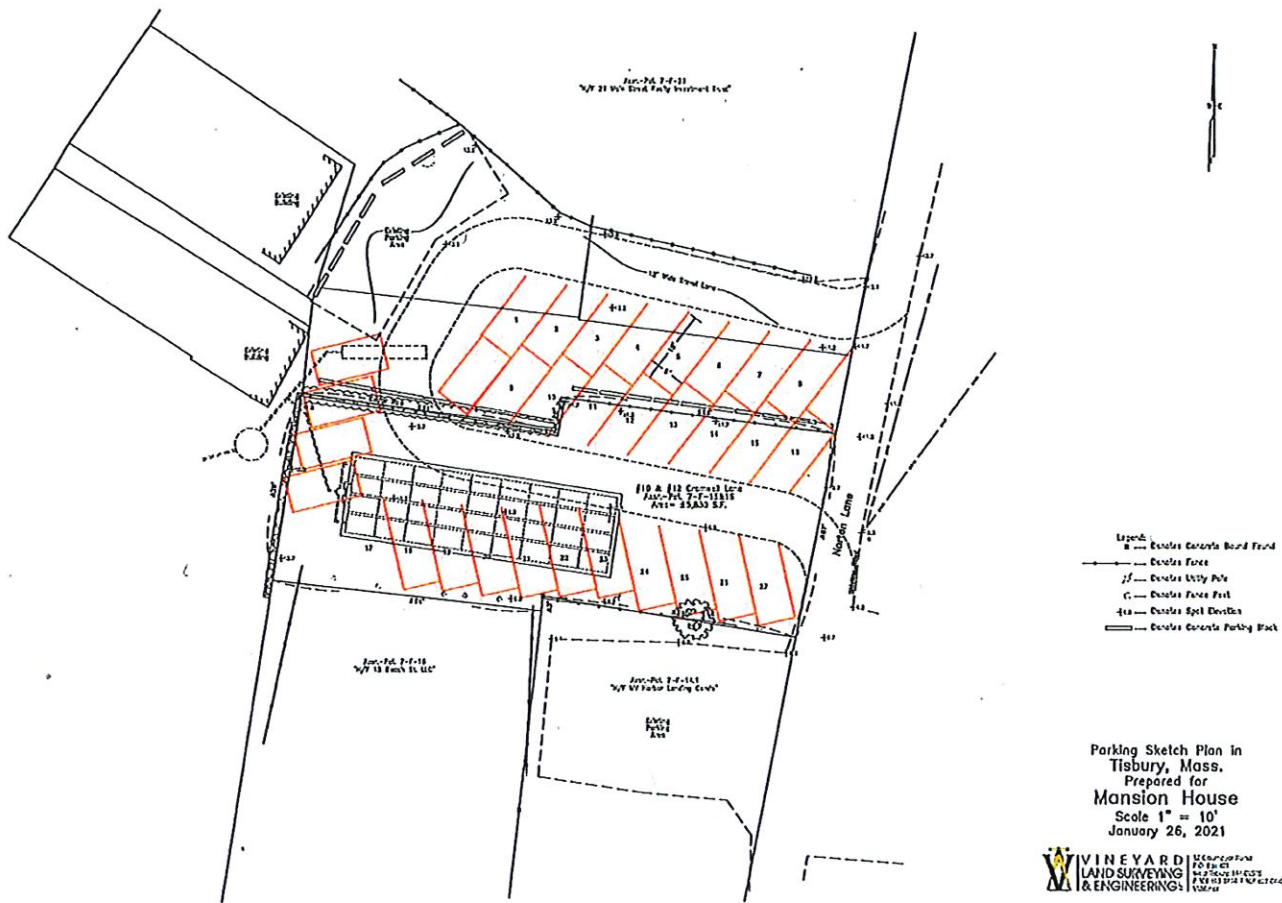
The By-Law is perfectly clear. The applicant is seeking to amend the existing special permit, to recognize the use of abutting property owned by the applicant, as additional parking for the operation of the Hotel. We also understand that the Building Official has referred this proposed use to the Martha's Vineyard Commission, under checklist item DRI 3.1(h). This too is incorrect, as that applies to a stand-alone parking lot, which this is not. We hope that the Zoning Board of Appeals will review this matter under the applicable By-Law, and approve this simple modification.

We look forward to the opportunity to discuss this further with the Board.

Very truly yours,



Geoghan E. Coogan, Esq.
Edmond G. Coogan Law Office, P.C.





*First American
Title Company*

October 30, 2017



Geoghan E. Coogan, Esq.
Edmond G. Coogan Law Office, P.C.
4A Causeway Road
P.O. Box 1639
Vineyard Haven, Ma. 02568

Re: Merger – Deborah Mayhew Panhandle Road

Dear Geoghan:

Having reviewed the materials that you e-mailed me, I agree with your opinion that the zoning change of 1986 did not impact the status of Lot 7 and Lot 6 as conforming lots. Since the lots were in separate ownership at the time of the zoning change, the later acquisition of Lot 6 should not affect that status. I hope that this information is of assistance.

Sincerely,

Sheila M. Hurley, Esq.
Vice President and Director of Commercial Agency Services