

SUPREME JUDICIAL LAW COURT
SITTING AS THE LAW COURT

YORK, SS

STATE OF MAINE

Law Docket No. Yor-24-548

MARK MORIARTY et al,

Appellant,

V.

TOWN OF ELIOT,

Appellee.

On Appeal from the York County Superior Court
York County

THE REPLY BRIEF OF APPELLANT, MARK MORIARTY et al.

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STATUTES, CASES AND AUTHORITIES

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Goldman v. Town of Lovell, 592 A.2d 165, (Me. 1991)..... 11, 12, 13

The Appellants Moriartys (hereafter the Moriartys) set forth a reply brief and reply to two issues raised by the Appellee Town of Eliot (hereafter the Town):

ISSUES

- I. THE MORIARTYS DID NOT WAIVE THE ARGUMENT THAT INTERPRETING THE PREAMBLE TO MEAN THAT ALL HOME BUSINESSES MUST BE “IN A SCALE AND CHARACTER WITH NEIGHBORHOODS AND AREAS THAT ARE PRIMARILY RESIDENTIAL” WOULD UNLAWFULLY DELEGATE LEGISLATIVE AUTHORITY TO THE PLANNING BOARD BECAUSE THIS ARGUMENT WAS MADE IN THE MORIARTYS’ REPLY BRIEF BEFORE THE SUPERIOR COURT.
- II. THE MORIARTYS REQUESTED APPROVAL FOR A PROFESSIONAL OFFICE AND THE CASES CITED BY THE TOWN TO SUPPORT THE IDEA THAT THE TOWN CAN RE-CAST THIS INTO AN APPLICATION FOR EQUIPMENT STORAGE DO NOT SUPPORT THE TOWN’S ARGUMENT THAT THE PLANNING BOARD HAS THE AUTHORITY TO RE-DEFINE AN APPLICATION INTO SOMETHING NOT PERMITTED, THEN DENY IT.

ARGUMENT

- I. THE MORIARTYS DID NOT WAIVE THE ARGUMENT THAT INTERPRETING THE PREAMBLE TO MEAN THAT ALL HOME BUSINESSES MUST BE “IN A SCALE AND CHARACTER WITH NEIGHBORHOODS AND AREAS THAT ARE PRIMARILY RESIDENTIAL” WOULD UNLAWFULLY DELEGATE LEGISLATIVE AUTHORITY TO THE PLANNING BOARD BECAUSE THIS ARGUMENT WAS MADE IN THE MORIARTYS’ REPLY BRIEF BEFORE THE SUPERIOR COURT.

The Town argues that the Moriartys never made the argument before the Superior Court that giving the Planning Board the authority to determine whether a proposed use was “in a scale and character with neighborhoods and areas that are

primarily residential” was an unlawful delegation of legislative power. Appellee’s Brief at 10, n.6. This argument was not waived as it was argued in the Moriartys’

Reply Brief:

“After the brief preamble of what Home Businesses are intended to be the Code drafters state that “Home Businesses must comply with the following requirements.” Record at 74-75. After this statement the Eliot Zoning Code lists no less than 12 specific criteria the applicant must meet to get approval, including the square footage allowed, sign dimensions, disposal of waste, employees, and how merchandise can be sold. Not one of these standards requires the applicant to prove that the commercial activity is in a scale and in character with the neighborhood. Why not put that in the criteria? Because it would effectively delegate legislative authority to the Planning Board. Now the Planning Board could reject any Home Business if it believed it didn’t belong in a neighborhood. This could mean ALL Home Businesses could be rejected pursuant to this criteria. The drafters of the Eliot Zoning Code never intended this and it likely would have been an unlawful delegation of legislative authority to allow the Planning Board to decide what Home Businesses were appropriate in a neighborhood and which ones weren’t.”

Moriartys’ Reply Brief dated October 21, 2024, page 2. It is clear this argument was never waived and was immediately raised by the Moriartys in the Superior Court when the Town made the argument, for the first time, in its Rule 80B brief that this preamble was the thirteenth standard that an applicant must meet to obtain approval for a Home Business. The Moriartys argued in the Superior Court, as they Moriartys argue in this Court, that even if this preamble was intended to create a thirteenth standard that an applicant must meet for a Home Business, such a standard was so wide open and undefined that it would allow the Planning Board to deny any Home Business by stating this particular business doesn’t belong in a

residential neighborhood. (Since a Home Business is a business use in a residential neighborhood the Planning Board could always find a Home Business doesn't belong in any residential neighborhood, despite the drafters of the ordinance providing specific criteria to define which business uses were permitted as Home Businesses and which weren't.) This argument of unlawful delegation of authority was never waived before the Superior Court.

The Town in its Brief seems to suggest that the Moriartys should have raised this argument in their complaint or original 80B brief and not in the Reply Brief before the Superior Court. Appellee's Brief at 10, n.6. (While not directly argued that way the statement made by the Town in its Brief can be read this way.) The reason this was not argued in the complaint and the Moriartys' Rule 80B brief is that it was not clear why the Planning Board denied the Moriartys' application for a Home Business. It seemed clear from the findings of fact that the Planning Board did not deny the Moriartys' application because the proposed use was not "in a scale and character with neighborhoods and areas that are primarily residential". Those words appear nowhere in the conclusions of the Planning Board's June 19, 2024 denial letter of the Moriartys' application. Appendix at 23. (The conclusions reached by the Planning Board appear to be that a Home Business of equipment storage is not permitted, and therefore the application was denied because it was treated as equipment storage and not a professional office.) For the first time

during the 80B appeal process in the Superior Court the Town raised in its brief the argument that there was a thirteenth standard that the Moriartys did not meet and that is why they did not receive approval for a Home Business- whether a proposed use was “in a scale and character with neighborhoods and areas that are primarily residential.” When this argument was raised by the Town in the Superior Court, but was not part of the Town’s denial of the Moriartys’ application, the Moriartys responded in their Reply Brief that such a standard would unlawfully delegate legislative authority to the Planning Board. (The Moriartys also made the argument that the preamble was not actually a standard). The Moriartys properly made this argument when it became clear the Town’s attorney was defending the Planning Board’s decision by using the preamble as the thirteenth standard for a Home Business. For the reasons the Moriartys have set forth in their Brief, using the preamble as the thirteenth standard is an incorrect reading of the zoning ordinance, and even if it was a correct reading of the zoning ordinance it would unlawfully delegate legislative authority to the Planning Board.

Lastly, the way to determine if this unlawfully delegates legislative authority to the Planning Board is to wipe out the twelve criteria for determining a Home Business and leave only the one standard: A Home Business is permitted if the Planning Board determines the proposed use is “in a scale and character with neighborhoods and areas that are primarily residential.” If this is your only

standard for granting or denying a Home Business how do you decide? You can't decide other than to determine whether you think this Home Business is a good idea or not. This is not a standard which any Board can apply. The two words with any meaning are "scale" and "character". Scale is size and how would that be interpreted? Is it defined by number of employees, square footage, type of business, or some other criteria? One week the Planning Board could allow a 3,000 square foot business in a residential area with two employees. and the next week the Planning Board could disallow a 1,000 square foot business with four employees in a residential area, both interpreting what "scale" fits in a zone? An interpretation of the word "character" is even harder. Character would mean a type of business. What type of business meets the "character" of a neighborhood? This is impossible to determine and is simply a judgment call made by the Planning Board, without any direction. I could list every business use known to exist and you would not be able to tell which have the "character" that would allow them to exist in a particular residential area. As the Moriartys have argued before the Superior Court, and before this Court, using the preamble as a standard is an incorrect interpretation of this ordinance and, if it really was a standard, is so undefinable that it delegates legislative authority. (If the Town wants to use the preamble to define one of the 12 criteria in the Home Business ordinance it must explain which criteria is ambiguous and needs the preamble's help to define it,

something the Town has not bothered to do.) This Court should hold that it was error to treat the preamble as the thirteenth standard for the Eliot Home Business ordinance and then deny the Moriartys' application for not meeting this standard (if this really was the reason for denying the Moriartys' application.)

II. THE MORIARTYS REQUESTED APPROVAL FOR A PROFESSIONAL OFFICE AND THE CASES CITED BY THE TOWN TO SUPPORT THE IDEA THAT THE TOWN CAN RE-CAST THIS INTO AN APPLICATION FOR EQUIPMENT STORAGE DO NOT SUPPORT THE TOWN'S ARGUMENT THAT THE PLANNING BOARD HAS THE AUTHORITY TO RE-DEFINE AN APPLICATION INTO SOMETHING NOT PERMITTED, THEN DENY IT.

The Town argues that the Planning Board had the right to determine this was equipment storage and not a professional office and then deny it because equipment storage is not allowed. Appellee's Brief at 14-16. The Town cites a number of cases for the authority that the Town has discretion to determine what the applicant is applying for and is not bound by the applicant's presentation. However, these cases do not support the proposition that an applicant, demonstrating the right to a Home Business of an electrician's office by meeting all twelve criteria, suddenly becomes an applicant for equipment storage and not an office because some electrical equipment is stored in the office. Instead, the Planning Board must recognize that storing some items is a legal use of an electrician's office, but that the Planning Board can define and limit the items stored in the office.

The Town cites several cases that do not support its argument. The Town cites Lane Const. Corp. v. Town of Washington, 2008 ME 24 (Decided March 11, 2008) to support the idea that a Planning Board can re-characterize an application into some other use and then deny it. Appellee's Brief at 14. In Lane Const. Corp. the Planning Board in Washington granted a conditional use permit for the primary use of a hard rock quarry and allowed a rock crusher as part of that use. Lane Const. Corp. at paragraph 4. After an appeal to Superior Court, remand and another appeal to Superior Court, there was finally an appeal to this Court by the applicant arguing that the Planning Board was correct that a rock crusher was part of the hard rock quarry use and was permitted as part of that use. Id. at paragraphs (12) through (16). This Court held that the Planning Board was within its discretion to find that the rock crusher use was part of a hard rock quarry use and overruled the Superior Court ruling to the contrary and reinstated the Planning Board decision on this issue. Id. at (37).

A parallel to this case exists. In this case the Planning Board had before it a request for a professional office of an electrician with some storage of electrical equipment and supplies. While the Eliot Planning Board had the discretion to determine what equipment and supplies were necessary to be stored as part of an electrician's office, the approach taken by the Eliot Town Planner and Eliot Zoning Board of Appeals, it has no right to deny the professional office by claiming this

was now just equipment storage and ignoring the permitted use of a professional office. Appendix at 157, 158, 26, 127, 132 for Eliot Town Planner and Zoning Board of Appeals approach. If this approach was taken by the Washington Planning Board, and by this Court, then it would have denied the hard rock quarry by claiming it was really just a rock crushing operation, which is not allowed, and deny the rock quarry conditional use which was allowed. Instead, the Lane Const. Corp. case stands for the idea that the permitted use is allowed but that another non-permitted use can be part of the permitted use, but that does not mean the primary use is changed to a non-permitted use and then disallowed. What the Eliot Planning Board did in this case was treat the use of equipment or supply storage, which use which is part of a primary use as a professional office, as the primary use and then deny the permit. The Planning Board should have granted the professional office use and placed whatever restrictions were reasonable and appropriate on the equipment and supply storage. The Town was in error for re-defining the Moriartys' application so that it could deny it.

The Town cites and discusses at some length Goldman v. Town of Lovell. Appellee's Brief at 14-15. This is a strange case to cite for authority as the facts are markedly different from this case. In Goldman the Plaintiff, Goldman, received a permit in 1987 for a "garage with sleeping area for 1 bedroom plus a sitting room", and the permit specifically provided that Goldman was not to construct a

bathroom or kitchen in the garage. Goldman v. Town of Lovell, 592 A.d 165, 166 (Me. 1991). Instead of following his permit Goldman constructed in his garage a sleeping area with a bathroom and kitchen. Id. at 166-167 The Town of Lovell filed an 80K Complaint against him for land use violations and, predictably, Goldman lost the 80K Complaint, was assessed fines and legal fees and was required to remove the illegal work. Id. at 167. Thereafter Goldman applied for a permit for the same bedroom but this time with a bathroom. Id. This was understandably denied because the Town of Lovell believed it was actually a dwelling and had plenty of evidence to support this. Id. The Law Court upheld the Planning Board's decision that this was a "dwelling unit" because this finding was supported by the following evidence: The septic system application was for a two-bedroom dwelling, the interior plumbing permit application described the unit being constructed in the garage as a dwelling, and the unit contained a kitchen sink with dish sprayer and built-in refrigerator. Id. at 169 Goldman had little argument that what he requested was not a dwelling. The facts of this case are unlike the Goldman case.

The only parallel to this case is how the Town of Lovell handled Goldman's application. He was allowed the permitted use of an additional bedroom in his garage. This was granted and presumably, even after he lost his 80K and 80B appeals in Court, he was still allowed his bedroom in the garage. He was not,

however, allowed to change the bedroom into a dwelling. This was not allowed as it violated Lovell's zoning ordinances. In this case the Eliot Planning Board should have, but did not, allowed the Moriartys to have a Home Business of a professional office and then define what electrical equipment and supplies could be stored in the office. (As stated previously this approach by the Town Planner and Zoning Board of Appeals was correct, and of course the Planning Board could define what items are allowed differently than the Town Planner but should not deny a permitted use.) This is what was done in Goldman- the Town allowed what is permitted and drew the line at what is not permitted. The Eliot Planning Board did not follow this and instead denied what was permitted, and made no distinction between permitted and non-permitted uses. For this reason, the decision of the Eliot Planning Board should be overturned and the Moriartys granted a permit for a professional office, with conditions regarding storage of any electrical equipment or supplies.

CONCLUSION

The Moriartys have met the standards for a Home Business and should have received a permit. The preamble does not contain a standard the Moriartys must meet. Therefore, the Moriartys met the criteria for a Home Business as a Professional Office and the Eliot Planning Board acted "clearly contrary to specific provisions of" the Eliot Zoning Ordinances in denying their application for a Home

Business because they met the ordinance criteria to receive approval for a Professional Office and for storage of any items associated with a Professional Office used by an electrician.

RESPECTFULLY SUBMITTED
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Date: 05/12/2025

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CERTIFICATE OF SERVICE

I certify that on this date I mailed, postage paid, two copies of the Appellant's Brief to Gray Louis, Esq. attorney for the Town of Eliot.

Date: 05/12/2025

/s/ Patrick S. Bedard
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