

TOWN OF SANDGATE, VERMONT
ZONING BOARD OF ADJUSTMENT

In re: Kastner Zoning Permit Application
Application No. 20-07-23

Landowner: J. Clark Kastner
Property Address: 63 Weldon Drive, Sandgate, VT
Hearing Date: August 19, 2020 and February 17, 2021

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

INTRODUCTION AND PROCEDURAL HISTORY

Landowner J. Clark Kastner owns certain property located at 63 Weldon Drive in Sandgate, Vermont, which is referred to herein as “the Property” or “the Nunes Camp.” Mr. Kastner submitted an application for a zoning permit dated July 13, 2020, seeking approval for a change of use from “Primitive Camp” to “One Family Dwelling Unit” (“Application”). On July 30, 2020, the Zoning Administrator denied the Application on the basis that the Property had merged with an adjacent lot pursuant to § 3.5 of the Sandgate Zoning Bylaws (“Merger Provision”), and that an additional dwelling unit would not be permitted on the merged lot. The ZA also referred the matter to the Zoning Board of Adjustment (“ZBA”) for review of the denial.

The ZBA held an initial hearing on August 19, 2020, which hearing was continued on February 17, 2021, following the conclusion of related litigation in a different forum.

By email dated March 26, 2021, the Landowner withdrew the change of use Application, and requested that the ZBA address the applicability of the exceptions to the Merger Provision in the absence of a proposed change of use.

FINDINGS OF FACT

Section 3.5 of the Bylaws provides that where “an existing small lot comes into common ownership with one or more contiguous lots, the nonconforming lot shall be deemed to be merged with the contiguous lot,” unless the applicable exception applies. The Nunes Camp is an approximately 10.5-acre lot, adjacent to another parcel of land owned by the same Landowner (referred to herein as the Kastner Homestead). The Nunes Camp is in the Forest 2 Zoning District (“F2”), wherein the minimum lot size is 25 acres. As such, the Nunes Camp is considered an existing small lot. Pursuant to the Bylaws, the Nunes Camp automatically merges with the Kastner Homestead unless the Landowner demonstrates that the exemption stated in § 3.5 applies.

One of the four requirements for application of the exemption is that the subject lot was developed with a water supply and wastewater disposal system. Ordinarily, the existence of a State permit would support a finding that this provision is satisfied, because a permit for wastewater and potable water systems have been required since July 1, 2007. However, the so-called “clean slate” exemption grandfathers wastewater and potable water supply systems in existence prior to January 1, 2007 from the permit requirement, until failure of the system(s), or until the occurrence of another event triggering a required permit. In other words, if the wastewater and/or potable supply system existed prior to January 1, 2007, a permit may not exist or be required.

Based on the evidence submitted at the Hearing, the ZBA finds, that (a) the Nunes Camp will retain its pre-existing, nonconforming configuration; (b) the Nunes Camp was developed as a Primitive Camp with water supply and wastewater disposal systems that were substantially complete on or before January 1, 2007; and (c) the existing water supply and wastewater systems are functioning in an acceptable manner. Further, the ZBA will require that upon transfer of the Property, the deed(s) of conveyance will create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both.

ORDER

Based on the foregoing, the ZBA concludes that the exception to the Merger Provision applies, and thus finds that the Nunes Camp did not automatically merge with the Kastner Homestead pursuant to § 3.5. In the event that the Landowner seeks a change of use with respect to the Nunes Camp, or in the event that the existing wastewater and/or potable water supply system fails, Landowner shall be required to apply for local and state permits as required under the Bylaws and/or Vermont’s Water System and Potable Water Supply Rules. If Landowner shall convey the Nunes Parcel or the Kastner Homestead in the future, the deed(s) of conveyance shall create appropriate easements for replacement of one or more wastewater systems, potable water systems, or both.

April 5, 2021

Approved by the Zoning Board of Adjustment:

NOTICE: This Decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Board. Such appeal must be taken within 30 days of the date of this Decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.