Item # 61

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Appeal a decision of the Board of Adjustment to affirm the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts); (David E. Axel, appellant).

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Matthew West **EXT** 7353

Agenda Date 08-12-03 **Regular** ☒ **Consent** ☐ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

1. **UPHOLD** the Board of Adjustment's decision to affirm the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts); (David E. Axel, appellant).
2. **REVERSE** the Board of Adjustment's decision to affirm the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts); (David E. Axel, appellant).
3. **CONTINUE** the request to a time and date certain.

(Earnest McDonald, Principal Coordinator)

BOARD OF ADJUSTMENT DECISION:

At its June 23, 2003 regular meeting, the Board of Adjustment voted to uphold the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts).

STAFF RECOMMENDATION:

Staff recommends the Board of County Commissioners (BCC) uphold the Board of Adjustment's decision to affirm the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts); (David E. Axel, appellant)

Reviewed by:
Co Atty: KZC
DFS:
Other:
DCM: SS
CM:

File No. rpdp01

GENERAL INFORMATION:

Appellant: David E. Axel, Mills Cove Homeowner's Association
Applicable Regulations: LDC, Sections 30.102(a) (Permitted Uses in the A-10, A-3 & A-5 Districts) & 2.3 (Definitions)

BACKGROUND:

- In a letter dated April 14, 2003, the appellant requested an interpretation by the Planning Manager of Section 30.102(a) of the Land Development Code (LDC), which enumerates permitted uses in the A-10, A-5 & A-3 (Rural Zoning Classification Districts).
- In response to this request, the Planning Manager determined that boathouses and boat docks are accessory uses that can only be permitted in the A-10, A-5 & A-3 districts after the establishment of a single-family residence as a principal use.
- Contrary to this interpretation, the appellant believes that boathouses & boat docks are uses that can be expressly permitted prior to the establishment of a single-family residence.
- Pursuant to LDC Section 30.43(c), the appellant appealed the Planning Manager's determination to the Board of Adjustment, which upheld the same at its June 23, 2003 regular meeting.
- Pursuant to LDC Section 30.43(f), the appellant has decided to appeal the Board of Adjustment's affirmation of the Planning Manager's decision to the Board of County Commissioners for further consideration.
- At its June 24, 2003 regular meeting, the BCC directed staff to evaluate the Land Development Code for the appropriateness of permitting boathouses and boat docks prior to the establishment of a single-family residence. The appellant did not want to wait for the staff to process a potential amendment to the code. Therefore, Mr. Axel has filed this appeal.

STAFF FINDINGS:

1. Section 2.3 (definitions) of the LDC defines accessory buildings and uses as follows:
    a. *An accessory building is a subordinate building or a portion of the main building, the use of which is incidental to that of the dominant use of the main building or land.*
    b. *An accessory use is one which is incidental to the main use of the premises.*
2. Section 30.102 (Permitted Uses in the A-10, A-5 & A-3 districts) of the LDC defines boathouses and boat docks as uses accessory to single-family residences, which are considered principal uses within those districts.
3. Staff believes it is not the intention of this LDC section to permit accessory uses (e.g., boathouses, boat docks) that are unrelated to or independent of an established principal use (e.g., single-family residence).

4. Staff further believes it is not the intention of this LDC section to permit the enumerated accessory uses to become principal or end uses in themselves.

STAFF RECOMMENDATION:

Unless expressly permitted, the LDC defines accessory buildings and uses, such as boathouses and boat docks, as uses subordinate and incidental to the principal use of a single-family residence in the A-10, A-5 and A-3 Districts.

The LDC does not define the terms "incidental" and "subordinate"; therefore, staff has applied the customary and usual meanings of both terms to conclude that accessory buildings and structures to which the terms apply are dependent upon or subordinate to a principal use of greater importance. For this reason, accessory uses, such as boathouses and boat docks should only be permitted in the A-10, A-5 and A-3 Districts after the establishment of a single-family structure.

In conclusion, staff recommends the Board of County Commissioners consider the findings stated above and uphold the Board of Adjustment's decision to affirm the Planning Manager's interpretation of the Land Development Code, thereby denying a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts). However, as directed by the Board, amendments to the Land Development Code are being prepared to address this matter. The Board could amend the code at that time, if deemed appropriate.

BOARD OF ADJUSTMENT DECISION:

At its June 23, 2003 regular meeting, the Board of Adjustment upheld the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts).

Attachments:
File Correspondence
Decision on Appeal
LDC, Section 102
Minutes of the June 23, 2003 BOA Meeting

AXEL
Real Estate, Inc.
www.axelrealestate.com

1757 W. Broadway Street, Suite 1
Oviedo, Florida 32765
(407) 366-6510
Fax (407) 359-5385
Toll Free (866) 366-6510

4/14/2003

Mr. Mathew West, Principal Planner
Seminole County Development Review
1101 East First Street
Sanford, Florida 32771
By facsimile: 665-7456

Re: Boathouse boat dock Permits in A-10, A-5 and A-3 districts

Dear Mr. West,

I am writing you as a director of the Mills Cove Homeowner's Association, Inc. on behalf of the owners of Lots 14 through 23 of Mills Cove (Plat Book 61 Page 44), which all front Lake Mills. The HOA is seeking an interpretation of Section 30.102 subsection 30.102(a) of the Seminole County Land Development Code as written in Ordinance 2000-13, which states:

Within any property assigned the A-10, A-5 or A-3Rural Zoning Classifications, no building, structure, land or water shall be developed except for the following uses:

(a) Single-family residences and uses accessory thereto, including one (1) guesthouse or cottage, boat docks and boathouses.

The preceding LDC Section differs is a key way from Section 30.202 (b) regarding uses permitted in R-1AAAA, R1-AAA, R1-AA and R1-A districts which states:

(b) Boathouses and boat dock as accessory uses, providing the roof of said boathouse does not exceed ten (10) feet above the mean high water line.

The distinction as interpreted by the HOA is that in the A-10, A-5 and A-3 districts boathouses and boat docks are uses that are specifically permitted uses whereas in the R-1AAAA, R-1AAA, R-1AA and R-1A districts boathouses and docks are only permitted as accessory uses. It is my understanding that the Seminole County Building Department presently does not share our interpretation and that an attempt to obtain a building permit for any of Lots 14 through 23 of Mills Cove will be rejected when there is not yet a single family residence. Please provide us with an interpretation of this matter.

Sincerely,

David E. Axel

Information regarding property for sale or rent is from sources we deem reliable and is subject to errors, omissions, change of price, rates and other conditions or withdrawal without notice. No representation is made as to the accuracy of any information furnished.

April 18, 2003

Mr. David E. Axel:
Axel Real Estate, Inc.
1757 W. Broadway Street, Suite 1
Oviedo, FL 32765

RE: Boathouse boat docks in A-10, A-5 and A-3 districts

Dear Mr. Axel:

Thank you for your letter dated April 14, 2003, concerning the subject above. In response to it, please accept this letter as my official interpretation of section 30.102 Permitted Uses (a):

Single-family residences and uses accessory thereto, including one (1) guest house or cottage, boat docks and boathouses.

All the uses listed after the word "thereto" are considered to be accessory uses. For example, you can't have a guest house without having a principal or main house. Therefore guest house, cottage, boat docks and boathouses are all accessory uses. None of these uses may be permitted without the existence of the principal use which is a single family residence.

I am in agreement with the Building Division's refusal to permit accessory structures in A-10, A-5 or A-3 zoning without the principal use (a single family residence) existing or being built simultaneously. If you wish to appeal my interpretation, please send me a letter of appeal with a check made payable to Seminole County in the amount of $185.00 and your appeal will be scheduled for the next available Board of Adjustment meeting.

For specific dates or further questions, please contact me at 407-665-7353.

Sincerely,

Matthew West,
Planning Manager

AXEL
Real Estate, Inc.
www.axelrealestate.com

1757 W. Broadway Street, Suite 1
Oviedo, Florida 32765
(407) 366-6510
Fax (407) 359-5385
Toll Free (866) 366-6510

7/7/2003

Matt West, Planning Manager
Seminole County Planning Division
1101 East First Street
Sanford, Florida 32771
Copy by facsimile: 665-7385

Re: Boathouse/Boat Dock Permits in A-10, A-5 and A-3 districts

Dear Mr. West,

The purpose of this letter is to appeal to the Board of County Commissioners the Board of Adjustments June 23, 2003 decision to uphold the Planning Manager's decision to deny a request for a boathouse and dock permit prior to a construction of a single family residence in an A-3 zoning district.

Although I understand that the BCC has directed staff to look into revising to Land Development Code to allow the construction of boat houses and boat docks prior to construction of a single family residence this appeal is being filed to preserve my rights as those changes have not yet been proposed.

Please schedule the appeal to be heard in August 2003.

Sincerely,

David E. Axel

Information regarding property for sale or rent is from sources we deem reliable and is subject to errors, omissions, change of price, rates and other conditions or withdrawal without notice. No representation is made as to the accuracy of any information furnished.

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS
DECISION ON APPEAL

This decision is made by the Board of County Commissioners of Seminole County, Florida, this 12th day of August 2003, in accordance with Section 30.43 of the Land Development Code of Seminole County (LDC), as amended, upholding the Board of Adjustment's decision to affirm the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts).

A. FINDINGS OF FACT

1. On June 23, 2003, the Board of Adjustment upheld the Planning Manager's denial of a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts).

2. The Board of County Commissioners has the authority and responsibility to adjudge this appeal by virtue of Section 30.43(f), LDC.

3. On August 12, 2003, the Board of County Commissioners heard an appeal of this decision.

B. CONCLUSIONS OF LAW

The Board of County Commissioners finds that the Planning Manager's decision to deny a boathouse and dock permit, prior to the construction of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts) is consistent with Section 30.102 (Permitted Uses in the A-10, A-5 & A-3 Districts) of the Land Development Code of Seminole County. The Board hereby agrees with and adopts the staff recommendations as reflected in the Agenda Memorandum, Item # _____.

C. DECISION

Based upon the foregoing and having fully considered the application submitted, and the testimony presented at the Board of County Commissioners public hearing on August 12, 2003, it is determined by majority vote of members of the Board of County Commissioners of Seminole County, Florida, that the subject decision of the Board of Adjustment is **UPHELD** and the requested boathouse and dock permit is denied.

DATED this 12th day of August 2003.

Board of County Commissioners
Seminole County, Florida

_____

Daryl G. McLain, Chairman

Sec. 30.102. Permitted uses.

Within any property assigned the A-10, A-5 or A-3 Rural Zoning Classifications, no building, structure, land or water shall be developed, except for the following uses:

(a) Single-family residences and uses **accessory** thereto, including one (1) guest house or cottage, **boat** docks and boathouses.

(b) Home occupations and home

(c) Groves and farms for the cultivation and propagation of citrus, vegetables, fruits, berries, nuts, sod and trees.

(d) Pastures and grasslands for the cultivation and propagation of livestock and the keeping of ponies or horses for the immediate use of the occupant and their guests excluding, however, the commercial raising of swine.

(e) Plant nurseries and green houses not involved with retail sales to the general

(f) Poultry

(g) Dairy

(h) Fish hatcheries and bait

(i) Stables, barns, sheds, silos, granaries, windmills and related agricultural

(j) Roadside stands for the sale of fruits, vegetables and similar products produced on the premises, provided such stand is placed no closer than twenty-five (25) feet to a property line.

(k) Public elementary

(l) Landscaping contractors as an **accessory** use to a wholesale nursery or wholesale tree

(Part XXIV, § 2, Ord. No. 92-5, 3-30-92; § 13, Ord. No. 94-15, 12-13-94; Ord. No. 97-18, § 22, 5-13-97; Ord. No. 98-13, § 18, 3-10-98).

SEMINOLE COUNTY
NOTICE OF PUBLIC HEARING
TO BE HELD ON
JUNE 23, 2003 AT 6:00 P.M.

Notice is hereby given that the Seminole County Board of Adjustment (BOA) will conduct a public hearing as noticed above, or as soon thereafter as possible, in the County Services Building, 1101 East First Street, Sanford, Florida, Room 1028 (Board Chambers). The purpose of this hearing is to take action on the following items:

APPEAL ITEMS:

1. David E. Axel, Appellant; Appeal from an administrative decision of the Planning Manager to deny a request for a boat house and dock permit, prior to the establishment of a single-family residence in the A-10, A-5 & A-3 (Rural Zoning Classification Districts). Matthew West, Planning Manager
(No public comment will be received for this item.)

Dave Axel addressed the board to say that he is the developer of this project known as Mills Cove, which is 29 lots; each with a minimum of 1 acre and 150 feet wide at the building line. He said that Section 30.102a of the Land Development Code is vague. He doesn't interpret a boat dock as an accessory structure according to the code. The code defines accessory structures as a subordinate use to the main use of the land. He explained that many times, the cost of the land exceeds the value of the home just because it is on the water and that makes it not incidental. The code defines a garage or a guest cottage as an accessory use; but he couldn't find boat docks mentioned anywhere in the code.

Mr. Goff stated that he had could see no problem with putting a dock on a vacant piece of land.

Ms. Buchanan stated that she agreed with Mr. Goff, but there is definitely some inconsistency in the code and that it needs to be addressed. She interprets the code as saying that a permitted use would be a single-family home with one (1) accessory building.

Chairman Hattaway asked Matt West about the original intent of the code.

Mr. West replied that the intent is to first establish the primary use. The code needs to be rewritten to make it more clear.

Mr. Pennington asked Mr. West to explain the difference between a boat house and a dock.

Mr. West explained that a boathouse has a roof that can be enclosed on one or more sides and a dock is open to the sky. There are also size regulations that can be placed

on a boathouse and occupants can't live there without approval of the Board of County Commissioners.

Chairman Hattaway said that he had looked everywhere in the code and he couldn't find a clear definition anywhere. He asked if the board had the authority to grant a waiver?

Mr. West said that he would have to refer that question to Steve Lee of the County Attorney's Office.

Steve Lee addressed the board to say that this board cannot grant a waiver but can overturn Mr. West's decision.

Lila Buchanan made the motion to deny the appeal for a boat dock in the A-10, A-5, and A-3 zoning districts and to recommend that the Board of County Commissioners look at Section 30.102a and change the wording in all of the zoning districts.

Wes Pennington seconded the motion.

Vote was 4-1 with Mr. Goff voting nay.