

Judge's ruling steers Tiverton Yacht Club back to the future

The yacht club plans to expand after a devastating fire in 2003 draws opposition from neighbors who want the operation to be governed by zoning laws from the 1960s.

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TIVERTON — A Superior Court judge has issued a ruling that in effect sends the Tiverton Yacht Club back to the 1960s, when members' children learned to sail on small "candy boats" and took swimming lessons from a float off a T-dock in the Sakonnet River.

That was 20 years or more be-

fore the club put in a marina to accommodate boats with a deeper draft, installed a swimming pool out of concern for pollution in the Sakonnet River and began offering swimming lessons to the public.

In early June 2003, fire destroyed the Victorian house that had housed the club since 1956.

SEE RULING, D2

D2 Thursday, December 6, 2007

EB

Ruling

Continued from Page D1

Until now, the club has continued to operate seasonally, maintaining a focus on children and youth that has sustained the membership, despite the difficulties the organization has faced, according to the commodore, Cheryl Padilla.

The club pool has hosted a Red Cross swimming program open to all children and the membership has had meetings and functions under a tent, Padilla said.

But the club's plans for rebuilding sent an already-simmering zoning dispute between the club and its neighbors to Superior Court, Newport.

In a recently finalized order in Superior Court, Newport, Judge Melanie Thunberg nullified a building permit the town had issued a year ago for a new clubhouse, agreeing with the club's neighbors that the plans would lead to an expansion and intensification of a nonconforming use in a residential zone.

The club has responded by asking the Town Council to amend the zoning ordinance to make the club a permitted use in

the R-40 zone, on Riverside Drive. The council, in turn, has referred the matter to the Planning Board for a recommendation.

And the neighbors who persuaded the court to nullify a building permit to reconstruct the club have objected to any zoning change.

One of them, lawyer David M. Campbell, wrote the Planning Board that the yacht club's request for a zoning change is a "transparent effort to reverse the Newport County Superior Court, which found that the TYC (is) a non-conforming use (and) should be eliminated as soon as possible."

Among other things, Thunberg's order prohibits the yacht club from continuing swimming instruction for the public under the auspices of the Red Cross.

Thunberg found that the yacht club, as a nonconforming use, may not expand in any way — not even to extend the foundation of the building to the perimeter of the supports for the porches that burned down with the century-old Victorian house that had served as a clubhouse.

A building permit granted by the town a year ago would have allowed the larger foundation, as well as an increase in the use-

able interior space and on-site parking.

However, the overall footprint of the clubhouse would have remained the same.

In her decision, Thunberg said, "Courts must strictly construe the scope of nonconforming uses because they are viewed as detrimental to the zoning scheme, and the overriding public policy of zoning is aimed at their reasonable restriction and eventual elimination."

She cited two philosophical concepts embodied in the law:

■ That the only nonconforming use entitled to protection is the one that existed at the time any ordinance was passed making it nonconforming, in this case, 1964.

■ That public policy requires the termination of nonconforming uses as speedily as possible.

Thunberg's order bans any commercial use of yacht club facilities; the pool, the marina, or any new clubhouse that may be built on the site of the old one.

Any new clubhouse — limited to the square-footage of the century-old house that burned down — could not even be rented out to a club member.

Thunberg strictly restricted off-season use, relying on evidence about club operations contemporaneous with the enactment of the town zoning ordinance in 1964 to define permitted and nonpermitted activities.

According to the yacht club's lawyer, the club cannot be used in any way in conjunction with the marina, not even to allow boat owners to park on yacht



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Tiverton Yacht Club was destroyed by an early morning fire in June 2003.

club property or use the yacht club bathrooms.

In approaching the Town Council for a zoning change, the lawyer, Kenneth R. Tremblay, argues that the town's Comprehensive Plan contemplates marine activity for the waterfront area encompassing the site of the yacht club, the zoning ordinance not withstanding.

"I don't think the town ever intended that the yacht club would cease to exist," he said.

"We're saying to the town, 'if you want a yacht club, you should permit it as a matter of right.' That would mean changing the zoning ordinance," Tremblay said.

The request for a zoning change filed with the council says that with few exceptions, most of the lots in the waterfront district, between the Stone Bridge abutment and the railroad bridge abutment, have insufficient land to support a yacht club.

Moreover, the part of the waterfront district that is off Main Road is unsuitable because of the high volume of traffic, combined with the fact that many children use the club in the summer, Tremblay said.

The club asks that the council amend the zoning ordinance to make a yacht club a permitted use in the R-40 zone adjacent to the waterfront district on Riverside Drive south of the railroad bridge abutment.

Campbell, meanwhile, ar-

gues that the club's request is incompatible with the town's Comprehensive Plan because the club is in an R-40 zone.

Campbell, his wife, Kathleen, and two other abutters, John H. Moran Jr. and Eileen M. Moran, were plaintiffs in the lawsuit.

"They are trying to make a marina a permitted legal use in a residential zone," Campbell said.

If the request is granted, he said, he and his neighbors would be permitted to sell their homes to a marina developer, leading to a complete change in the characteristics of the neighborhood.

"The Tiverton Yacht Club operated for more than 30 years without a marina," Campbell said.

"Kids would come during the summer on weekdays," he said. "It was less of an adult club than it is now," said Campbell, whose wife was a member when she was a child.

"Slips and moorings are part of a marina, and a yacht club and a marina are not synonymous," said Campbell.

Campbell wrote the Planning Board that the yacht club's application is "defective" because it is "ambiguous," relying on the Planning Board to draft an amendment to the zoning ordinance.

Three members of the Planning Board are also members of the yacht club and must recuse themselves from any deliberation over the yacht club

request.

They are vice chairman Peter Corr, Stephen Hughes, Cynthia Nebergall. John Raposa, who also sits on the Planning Board, has a family member who is one of the directors of the yacht club.

The remaining five members of the board constitute a quorum and can hear the case, but the board is waiting for a conflict-of-interest ruling from the Rhode Island Ethics Commission before it proceeds, according to a board spokeswoman.

The Planning Board will meet next Thursday.

The judge, meanwhile, noted in her decision that "tension and hostility" marked the relationship between the yacht club and the Campbells and the Morans.

She cited testimony from John Brady, a retired mechanical engineer and club member, who alleged in a 2004 letter to a local newspaper that Moran assaulted him after he parked his car on Holden Way, a right-of-way that had already been a matter of dispute when the clubhouse burned down.

Brady "characterized the incident as 'the latest event in a long series of harassments by the neighbors to the north and south of the Tiverton Yacht Club,'" Thunberg wrote.

The fate of the right-of-way, which the club has sought for parking since 2002, is the subject of continuing litigation.