

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
TOWN OF JAMESTOWN ZONING BOARD OF REVIEW

APPLICATION OF SHM JAMESTOWN BOATYARD, LLC

**OBJECTORS' MEMORANDUM OF LAW OPPOSING  
APPLICATION FOR SPECIAL USE PERMIT**

**INTRODUCTION**

The “principal use” of a commercial property often determines who’ll use “amenities” inside and outside its buildings, how often they’ll use them, and what they’ll be used for. That’s because those “amenities” support that “principal use.” In that respect, each amenity is an “accessory use”, i.e., “[a] use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building.” R.I. GEN. LAWS § 45-24-31(3) (def’n of “accessory use”).

Here, SHM<sup>1</sup> Jamestown Boat Yard, LLC (“SHMJB”), seeks a special use permit to renovate the interior of a building on its property, including bathrooms, showers, and a kitchenette. It contends that it uses its property only for boat storage, repair, and sail rigging.

Fourteen neighboring landowners, including Mary Marshall and Charlene Heintz, disagree. SHMJB’s website advertises these bathrooms, showers, kitchenette, and other “first-class amenities” to attract customers and members of Safe Harbor Marina’s nationwide network to socialize and relax at its property before and after a day out on the water. These amenities include lawn games,

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<sup>1</sup> “SHM” stands for Safe Harbor Marinas, a national entity. More about that later.

barbecues, and “complimentary Wi-Fi.” Brandon Somers (“Somers”), SHMJB’s general manager, confirmed that these and other amenities exist at the property and his customers use them. Clearly, SHMJB uses the property for something beyond boat storage and repair, but the extent of this additional use remains unknown.

Marshall, Heintz, and other objecting neighbors ask the board to deny SHMJB’s application for special use permit without prejudice for this reason – it failed to fully identify the actual principal uses (plural) of its property and how the “amenities” it seeks to upgrade relate to these uses. Until it does, this board and abutting neighbors can’t properly assess whether the application meets the requirements to obtain a special use permit.

## I

### FACTS AND TRAVEL

#### A

##### PROPERTY BASICS

SHMJB owns property at 60 Dumpling Drive (“the property”) which has been used as a boat yard for decades. The property lies in an RR-80 zone in which marinas are permitted by special use permit, as is boat storage and repair. *See* JAMESTOWN, R.I., ZONING ORDINANCE § 82-301, Table 3-1, Use Code VI(F)(8-9) (Aug. 26, 2002) (“ZONING ORD.”), *available at* [https://library.municode.com/ri/jamestown/codes/code\\_of\\_ordinances?nodeId=PTIIC OOR\\_CH82ZO](https://library.municode.com/ri/jamestown/codes/code_of_ordinances?nodeId=PTIIC OOR_CH82ZO).

Three buildings currently stand on the property, one of which may date back to 1910. That building – the one at issue here – has accommodated boat storage and repair “for at least 110 years[.]”<sup>2</sup> [11/23/21 Tr. at 14, App. at 43] It currently houses a rigging shop for yachts, sanding and varnishing rooms, several offices, a kitchen area, bathrooms and showers. [See 11/23/21 Tr. at 9, 35-37, App. at 38, 64-66; see also Appl. for Modification to a Spec. Use Permit under the Zoning Ord., First Fl. Demolition Plan, Sheet A2.0 (“Appl.”), App. at 17]

SHMJB owns eighty-six moorings off the adjacent shoreline where its customers moor boats. [See 11/23/21 Tr. at 57-58, App. at 86-87] Boating customers park on the property while out on the water. [11/23/21 Tr. at 53, App. at 82] The zoning ordinance requires a “[m]arina or yacht club with indoor facilities” to have one parking space per 1.5 boats or slips. ZONING ORD. § 82-1203. Consequently, this boatyard’s parking lot must have at least fifty-seven parking spaces, not including parking for employees, customers of boatyard storage and repair services, and for boats tied up at associated docks or slips.

## B

### PRIOR ZONING RELIEF

Coddington Yachts Center, Inc., took title to the property in January of 1979. On September 14, 1984, it obtained a special exception to construct a 60-by-180 foot

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<sup>2</sup> This building is the smallest on the property. [See 11/23/21 Tr. at 40, App. at 69] Two larger buildings are used for boat repair and storage. Many are stored outside. [See JAMESTOWN, R.I., WEB GIS MAPS AND ONLINE PROP. INF., Sept. 2020 RIGIS aerial photo, 60 Dumpling Dr., available at <https://www.mainstreetmaps.com/ri/jamestown/public.asp>, App. at 6]

building “for indoor yacht storage[.]” A prior panel of the board found that “[Coddington Yachts] is already in the business of storing boats[.]” [Letter from Theresa C. Donovan to Coddington Yachts Center, Inc. (Sept. 14, 1984), App. at 2]

Coddington Yachts merged with Billings Marine to form Jamestown Boat Yard, Inc., earlier in 1984. On February 24, 2016, this board granted Jamestown Boat Yard, Inc., several variances and a special use permit to enclose an existing structure and construct a new one to replace two temporary buildings “for the continued use of boat storage.” [See Letter from Richard Boren to Christian Infantolino (Feb. 24, 2016), App. at 4]

## C

### SAFE HARBOR MARINAS

On January 17, 2020, Jamestown Boat Yard, Inc., conveyed the property to SHM Jamestown Boatyard, LLC (“SHMJB”), a Delaware limited liability company “with a mailing address of c/o Safe Harbor Marinas, 14785 Preston Road, Suite 975, Dallas, TX 75254[.]” Safe Harbor Marinas is a Texas-based real estate trust that owns marinas throughout the country. [11/23/21 Tr. at 41, App. at 70]

SHMJB’s website informs viewers that:

Safe Harbor Jamestown Boatyard is peacefully nestled among the scenic granite bluffs and gorgeous coastal landscapes of Narragansett Bay’s East Passage. Block Island, the Cape, and Newport Harbor are all within easy reach, while a premier marine service facility, first-class amenities, and summer days abundant in lively cookouts, acclaimed music festivals, and thrilling regattas give boaters a truly all-inclusive waterfront experience.

[Ex. A at 1, App. at 25] The website lists these “first-class amenities” as:

- ◆ Barbecue Grills
- ◆ Community Leisure Space
- ◆ Complimentary Parking
- ◆ Complimentary WiFi
- ◆ Courtesy Bikes
- ◆ Dog Park
- ◆ Fire Pit
- ◆ Kitchenette
- ◆ Lawn Games
- ◆ Restrooms
- ◆ Showers

[Ex. A at 3, App. at 27, 29]

All listed amenities exist on the property except the “dog park.” [11/23/21 Tr. at 46, App. at 75] SHMJB’s boating customers, including “transient” boaters, use all of these amenities including the barbecue grills. So do SHMJB’s employees. [11/23/21 Tr. at 46, App. at 75] There’s one fire pit, often used as a place to congregate during the evening. [11/23/21 Tr. at 47, App. at 76] The community leisure space consists of a ten-by-ten foot deck leading to a fixed pier where people access boat slips the launch to the moorings. A picnic table sits on the deck. [11/23/21 Tr. at 55-56, App. at 84-85]

Customers use the bathrooms and showers. [11/23/21 Tr. at 51-52, App. at 80-81] They also use the kitchenette, but, according to Somers, not to cook. They

store food in the refrigerator while out on the water given that most boats don't have one. [11/23/21 Tr. at 49, App. at 78] Some cooking takes place in the kitchen for customer-related events. "[I]f we have some type of party to show our support of our customers," said Somers, "yes, we may -- we may heat something up in the oven or we may wash some dishes from the event." That happens "[a] smattering of times a year", mostly during the summer. [11/23/21 Tr. at 50, App. at 79]

How many customers park cars at the property at any given time likely depends on the season. [See 11/23/21 Tr. at 54, App. at 83] "[L]ike an event center," Somers noted, "you may have all the cars parked bumper to bumper or you may have individual spaces that are easier to come and go from." [11/23/21 Tr. at 53, App. at 82]

Use of the property by SHMJB's customers likely increased since the boatyard's 2020 affiliation with Safe Harbor Marinas. Jeffrey Gravidahl, a co-owner of 28 Newport Street, stated:

The very second that Safe Harbor purchased the Jamestown Boatyard, the intensity of the nonconforming business use of the property increased dramatically. The boatyard spiraled from catering to a relatively small number of local boat owners to being an advertised destination spot for all Safe Harbor's thousands of members to visit and use. Just as all of Safe Harbor's other yards and marinas are made available to -- made available to Safe Harbor members.

[11/23/21 Tr. at 65, App. at 94]

## D

### SHMJB'S APPLICATION

SHMJB applied for dimensional variances to replace an existing exterior stairways, ramps, and exterior decking. It seeks a special use permit for interior renovations.<sup>3</sup> The application lists “Boat storage/Maintenance/Office” as the present use of the premises, and “No Change” under proposed use. [Appl. at 1-2, App. at 8-9] Interior renovations include relocating two existing bathrooms so “the public or the -- their clients don’t have to walk through the entire rigging shop in order to get to use the facilities.” [11/23/21 Tr. at 16-17, App. at 45-46] Customers will be able to access one of them from outside the building. [11/23/21 Tr. at 19-20, App. at 48-49; *See* Appl., First Fl. Plan, Sheet A2.1, App. at 18] The two outdoor showers will remain in place – perhaps enclosed – and another shower will be added to the ADA-compliant indoor bathroom. [*See* Appl., First Fl. Plan, Sheet A2.1, App. at 18] The two existing kitchen areas will be combined into one, lowering their combined area from 200 to 156 square feet. [11/23/21 Tr. at 18, 26, App. at 47, 55; *compare* Appl. First Fl. Demo. Plan, Sheet A2.0, App. at 17, *with* Appl., First Fl. Plan, Sheet A2.1, App. at 18] The new one will have “all new kitchen cabinets, counters, appliances and fixtures” and a “range hood over oven[.]” The plan appears to depict a stove top. [*See* Appl., First Fl. Plan, Sheet A2.1, App. at 18] The

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<sup>3</sup> Those represented by the undersigned don’t object to the variances. They also don’t object to work inside the building specifically related to boat repair, rigging, and boat storage.

demolition plan indicates that the two existing kitchens have cabinets, appliances, and a counter. [See Appl., First Fl. Demo. Plan, Sheet A2.0, App. at 17]

SHMJB doesn't believe it needs a special use permit to make the planned renovations but applied for one anyway out of an abundance of caution:

[T]he boatyard operates, like we're talking about earlier, in a residential neighborhood underneath the special use permit. So, whatever special use permit is out there is a caution and/or to be able to touch any buildings that are there. Even if we're offered under the grandfathering right of the special use permit, we do need the request to modify and/or touch the building.

[11/23/21 Tr. at 23, App. at 52] It noted earlier that there will be “[n]o change in use.”

No intentions of changing use. It's more than – it's more making the use more efficient for the area. Like Bill [Burgin] explained, you know, to be able to get to the one from one area they don't have to walk through the sanding shop. In order to get to the ADA-accessible bathroom, they don't have to walk through the entire paint shop. They will be able to access from the outside, that's the whole relocation. And then the bathroom upstairs is so that the employees who are working in the offices don't have to go down soon-to-be-fixed really steep staircases.

(Bracketed material added). [11/23/21 Tr. at 19-20, App. at 48-49]

Some neighbors are skeptical. They believe that Safe Harbor intends to devote the property to social and recreational activities for its local customers and Safe Harbor's members in addition to boat storage, maintenance, and office space. Somers denies that'll happen.

The board heard this matter on November 23, 2021. It asked the parties to file memos addressing whether it must confine its ruling to the “four corners of the



application” or whether it should consider the entire property. [See 11/23/21 Tr. at 74, App. at 103]

## II

### DISCUSSION

“A property owner who seeks to expand or ‘intensify’ a nonconforming use internally may do so as a matter of right if such intensification will not result in a substantial change to the use’s effect on the neighborhood.” *Pope v. Little Boar’s Head Dist.*, 764 A.2d 932, 935 (N.H. 2000). Presumably the same applies to uses permitted by special use permit. But whether intensification “internally” will “result in a substantial change to the use’s effect on the neighborhood” is a question of fact where the inquiry must focus on how internal intensification fits with – and furthers – the property’s “principal uses.” Clearly, the board must know what those uses are for the inquiry to succeed.

Here, evidence adduced at the hearing shows that SHMJB’s application understates the current and proposed uses of its property. What effect, if any, renovations to the bathrooms, showers, and kitchenette will have on neighboring properties remains unknown because SHMJB has given no indication who, and how many, people will use them.

#### 1. **Intensification “internally” may intensify “principal” use(s)**

How, and how often, accessory uses are used on a given property depends on the property’s principal use. For instance, it seems reasonable that only a business’s employees would use an on-premises kitchenette or showers if that

business only stores and repairs boats – no one expects that kind of business to provide those amenities for its customers. Put differently, customer use of those amenities isn't "customarily incidental" to that "principal use." Hence, improvement of staff-only accessories won't intensify overall use of the property.

Now let's tweak the facts. The boatyard doesn't just store and repair boats, but provides a place for boating customers to relax, play lawn games, gather around a fire pit, use barbecues, and enjoy Wi-Fi. While some customers only need their boats stored during the off-season or repaired on occasion, others park their cars at this boatyard while out on the water or socializing when they return. Plus, this boatyard provides a launch service to ferry these customers to and from their boats tied up at the boatyard's nearby moorings.

Under this set of facts, the boatyard's customers are more likely to use accessories – or "amenities" – such as bathrooms, showers, and a kitchenette. Customers are now encouraged to stay longer at the property to relax and socialize. Those that do will likely need bathroom facilities or something to eat or drink. Boaters returning from a long day out on the water may want or need a shower, especially if they intend to stay at the boatyard to enjoy its other "first-class amenities."

**2. Evidence in the record suggests SHMJB is developing a "yacht club" use at the property**

Availability of these amenities to SHMJB's customers suggests that this boatyard has a second primary use that caters to their comfort and entertainment – customer use of these accessories is "customarily incidental" to that kind of

“principal use.” That, in turn, means an overall increase in customers using the facility compared to when it was just a place to store and repair boats. Intensification “internally” supports intensification of use of the entire property.

That conclusion seems evident from something a little more big picturesque, namely the union of Safe Harbor Marinas, a national organization, with Jamestown Boat Yard, Inc., a long-standing local business. Safe Harbor isn’t advertising “featured amenities” only for the boatyard’s employees, nor did it enter into this union just to run a boatyard. On the flipside, Jamestown Boat Yard, Inc., doesn’t need Safe Harbor’s nationwide resources and expertise to run its boat storage and repair business “as is” – it’s done a good job of that for decades. This new entity intends to attract customers and Safe Harbor members to use the boatyard’s facilities – all of them. There’s nothing intrinsically wrong with that, all else equal.

But all else isn’t necessarily equal. Intensifying the property’s use potentially impacts neighboring properties and the public, the very concerns addressed by special use permit standards. And this board can’t assess that impact absent a full disclosure and accounting of all uses made of the property.

One point of agreement, though – the use, or uses, of the property aren’t nonconforming as they’re permitted by special use permit.<sup>4</sup> “[A] ‘nonconforming use is a particular use of property that does not conform to the zoning restrictions applicable to that property but which use is protected because it existed lawfully before the effective date of the enactment of the zoning restrictions and has

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<sup>4</sup> Uses permitted by special use permit include a “yacht club.” *See* ZONING ORD. § 82-301, Table 3-1, Use Code VI(F)(11).

continued unabated since then.’ ” *Cigarrilha v. City of Providence*, 64 A.3d 1208, 1212 (R.I. 2013) (quoting *RICO Corp. v. Town of Exeter*, 787 A.2d 1136, 1144 (R.I. 2001)). That said, zoning law seeks to get rid of them when the opportunity arises:

“ ‘[N]onconforming uses are necessarily inconsistent with the land-use pattern established by an existing zoning scheme.’ . . . In fact, we have subscribed to the view that a lawful nonconforming use is ‘ “a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. The policy of zoning is to abolish nonconforming uses as speedily as justice will permit.’ ”

*Duffy v. Milder*, 896 A.2d 27, 37 (R.I. 2006) (citation omitted) (quoting *RICO Corp.*, 787 A.2d at 1144, 1145).

A use permitted by special use permit is a different animal. They’re conditionally permitted uses “ ‘when under the terms of the ordinance the prescribed conditions therefor are met.’ ” *Bernstein v. Zoning Bd. of Review*, 99 R.I. 494, 497, 209 A.2d 52, 54 (1965) (quoting *Kraemer v. Zoning Bd. of Review*, 98 R.I. 328, 331, 201 A.2d 643, 644 (1964)).

Section 82-602 of the zoning ordinance enumerates those “prescribed conditions”:

Before any special use permit shall be granted, the applicant shall show to the satisfaction of the zoning board:

- A. That the granting of the special use permit will not result in conditions inimical to the public health, safety, morals and welfare; and
- B. That the granting of such special use permit will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.

In granting a special use permit, the zoning board may impose such special conditions as are deemed necessary to maintain harmony with other lots in the same or abutting zoning districts and to promote the objectives of this ordinance [chapter].

So what use – or uses – will the interior “amenities” serve at the Jamestown Boat Yard? Facts in the record suggest that SHMJB is developing a “yacht club” in addition to “[s]hip and boat storage and repair[.]” The zoning ordinance doesn’t define the former phrase, requiring resort to its plain, dictionary meaning. *See Mutual Development Corp. v. Ward Fisher & Co., LLP*, 47 A.3d 319, 328-29 (R.I. 2012) (“When a statute does not define a word, it is our practice to employ the common meaning of the word as provided by recognized dictionaries.”). A “yacht club” is “an organization of yachtsmen and yachtswomen for the purpose of encouraging and directing the sport of yachting.” *Yacht club*, DICTIONARY.COM, at <https://www.dictionary.com/browse/yacht-club> (last visited Jan. 9, 2022). SHMJB facilitates its customers’ and members’ ability to engage in yachting by renting moorings and slips, providing transportation to and from moorings, playing host to them socially, and providing onshore recreational activity. And, when enjoying those activities, those customers and members will need bathrooms, showers, food, and drink.

To date, though, SHMJB hasn’t made clear the true nature and extent of the boatyard’s operation(s). Somers denies that it is or will become a yacht club, but activities occurring on the property conflict with that denial. So does the website’s advertisement of “first-class amenities.” The 2020 marriage of Jamestown Boat Yard, Inc., with Safe Harbor Marinas suggests that the budding yacht club component will become more pronounced over time. Safe Harbor didn’t say “I do”

just to repair and store boats. It wants to grow its family of participating marinas, and that requires growth of uses of the Jamestown Boat Yard.

**3. The board must consider the entire property to evaluate the impact of “amenities” in SHMJB’s application**

Business growth often comes with growing pains, though, which answers the question posed by the board – it must consider everything happening on the property to determine what, if any, impact seemingly innocuous accessories like a kitchenette, bathrooms, and showers will have on the surrounding area. They don’t just serve the business’s employees – they serve SHMJB’s expanding customer base. Their use will increase over time because of that, raising several unanswered questions. Increased use of bathrooms and showers requires a septic system that can handle the flow. Whether the current system is up to the task hasn’t been explored.

Lowering the kitchenette’s total area doesn’t mean a lower capacity to prepare meals, snacks, and whatnot for the boatyard’s customers. Plans show that it’ll have an oven and stove. What’s the capacity of these new appliances compared to those they’ll replace? What other new appliances will be installed, and why? Answers to those questions directly relate to the social/entertainment component of the business.

SHMJB advertises “complimentary parking” for its customers. How many more customers and members does it expect to attract through its “first-class amenities[?]” Can current parking arrangements accommodate the resulting

increase in cars? And what about an increase in traffic? If there is one, will local roads be able to handle it? That'll require a traffic study.

SHMJB hasn't answered any of these and other related questions largely because it doesn't believe they need to be asked. It says, in essence, "nothing to see here because nothing's changing." But its website, and even its general manager, say there's more to see and enjoy at the Jamestown Boat Yard than just boat repair, maintenance, and storage. And those "first-class amenities" it advertises, some of which exist inside the building, support the unstated but very real social/entertainment component of its business.

\* \* \* \* \*

It's for these reasons that the board must look beyond the four corners of SHMJB's application. No one can't evaluate whether the planned renovations satisfy the elements in § 82-603(A) and (B) until everyone knows the full extent of the uses it's making of the property.

### III

## CONCLUSION

The objectors ask the board to deny SHMJB's application for a special use permit without prejudice to refile. If and when it does, it must identify and describe all uses taking place on its property.

Mary Marshall, Charlene Heintz, et al,  
by their attorney,

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**CERTIFICATION**

I certify that on the 12th day of January, 2022, I transmitted a copy of this document by electronic mail to the following:

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