TOWN OF LOVELL
BOARD OF APPEALS

ADMINISTRATIVE APPEAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

APPELLANTS:	BRIDGTON INVESTMENT FUND, LLC, AND MARK LOPEZ
LOCATION OF PROPERTY:	ROUTE 5, LOVELL, MAINE; TAX MAP R07, LOT 38
ZONING DISTRICT:	LIMITED COMMERCIAL DISTRICT

I. Background, Findings of Fact, and Administrative Appeal Request

Bridgton Investment Fund, LLC, and its owner Mark Lopez ("the Appellants") have filed an administrative appeal of the Lovell Code Enforcement Officer's determination, by letter dated July 28, 2022, that Appellant's proposed self-storage facility to be built on Route 5, Tax Map R07, Lot 38 ("the Property") is not a "warehouse" under the Lovell Zoning Ordinance ("the Ordinance") and thus is not an allowed use.

A. 2021 Approval

In October 2021, the Lovell Planning Board granted a conditional use permit to the Appellants to build three buildings to be operated as a self-storage facility at the Property ("Phase I"). While a "self-storage facility" was not listed as a permitted use in Section 6.2 of the Ordinance, at the time of the approval that section allowed the Planning Board to make a determination if a proposed use, if not listed in the land use table, "is most similar to" one of the allowed uses. The Planning Board determined at that time that a self-storage facility was most similar to a "warehouse" use and approved the application. The decision was not appealed, and the appellant constructed the Phase I storage facility.

B. 2022 Proposed Project and Appeal

On January 12, 2022, the Appellants submitted another conditional use application to the Planning Board to construct an additional six buildings to be operated as a self-storage facility on the Property ("Phase 2"). The Planning Board met to review the application on February 16, 2022, and determined that the application was not complete.

On March 3, 2022, the Lovell Town Meeting amended Section 6.2 of the Ordinance to delete the "most similar to" provision and added the following language:

> "Subject to the provisions herein governing lawfully existing nonconforming uses, any use not expressly listed in the above table as a permitted use (YU or P) conditional use (C), special exception (SE), or permit required from Bureau of Forestry (BFP), shall be considered prohibited in the zoning district. When there is a question about whether a

proposed use is listed in the above table, the Code Enforcement Officer shall make a formal, written determination.

On July 27, 2022, the Planning Board met with the Appellants to discuss the application, and the Planning Board voted to refer to the Code Enforcement Officer the issue of whether a self-storage facility is an allowed use under Section 6.2 of the Ordinance under the new Ordinance provision.

The CEO issued a determination on July 28, 2022, that a self-storage is not a listed use in the land use table and does not fall within the definition of a "warehouse" under the Ordinance.

The Appellants filed a timely appeal of the CEO's determination on August 24, 2022.

The Board of Appeals held a hearing on the application on October 20, 2022. At the hearing the Board heard from the Appellants, represented by Attorney Gordon R. Smith, as well as from Mark Lopez. The Board also heard testimony from members of the public, including Our Eden Association through its Director Paul T. Denis, Basil Dixon, and Peter Hines.

In addition to the CEO's July 28, 2022, determination, the Board also received the following written submissions:

1) Administrative Appeal Form and Letter dated August 24, 2022, along with associated exhibits, from Attorney Gordon Smith on behalf of Appellants Bridgton Investment Fund, LLC and its owner Mark Lopez;
2) Letter dated October 1, 2022, from Lis Bender;
3) Letter dated October 12, 2022, along with associated attachments from Our Eden Association;
4) Letter dated October 13, 2022, from Mary Jo Laniewski; and
5) Email dated October 18, 2022, from Susan Houlahan-Tubman.

II. Jurisdiction and Standard of Review

Under Section 10.3(A)(2) of the Ordinance, the Board of Appeals has jurisdiction to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the CEO in his or her review of and action on a permit application.

III. Conclusions of Law

Based on testimony and evidence in the record, the above stated facts and for the reasons that follow, the Board voted to conclude the following:

1. The proposed use for the property is a self-storage facility, a term that is not defined in the Ordinance nor listed in the table of allowed land uses outlined in Section 6.2.

2. The land use category "Warehouse, Distribution Center" is a conditional use in the Limited Commercial District, and this term is similarly not defined in the Ordinance.

3. The drafting convention throughout the table of land uses in Section 6.2 uses a comma to more specifically define and describe the type of allowed use, for example "Dwelling, Single Family," "Recreation, Passive," and "Restaurant, Fast Food." In this case the use of the term "Warehouse, Distribution Center" was deliberate and means warehouses that are also distribution centers.

4. Since the term "warehouse, distribution center" is not defined in the Ordinance, the Board concludes that the common and accepted meaning of that term is a distribution center that includes "a structure or room for the storage of merchandise or commodities" as defined in the Meriam Webster Dictionary.

5. Since the term "self-storage facility" is not defined in the Ordinance, the Board concludes that the common and accepted meaning of that term is "any real property used for renting or leasing individual storage spaces under a written rental agreement in which the occupants themselves customary store and remove their own personal property on a self-service based" as defined by the Maine Self-Storage Act, 10 M.R.S. § 1372(8).

6. The Appellants' standard lease form for its self-storage facilities explicitly notes that the Operator (i.e. the Appellants) "is not a warehouse man" and does not maintain care, custody or control of Occupant's leased space or the personal property therein. Similarly, under the Maine Self-Storage Act, an "operator" of such a facility "does not mean a warehouseman, unless the operator issues warehouse receipt, bill of lading, or other document of title for the personal property stored." 10 M.R.S. § 1372(5). Further, based on testimony and evidence in the record, the Appellants' proposed use of the property does not include warehousing or distribution as defined above.

7. The Board concludes that a "warehouse, distribution center" does not include self-storage facilities and thus the Appellants' proposed use of the Property for a self-storage facility is not allowed under Section 6.2.

8. The Board further concludes that the March 2022 amendments to the Ordinance eliminated the Planning Board's authority to allow certain uses that are "most similar" to listed uses under Section 6.2 of the Ordinance, and instead "any use not expressly listed" in the land use table is "considered prohibited."

9. Finally, the Board concludes that since a "self-storage facility" is not listed in the land use table in Section 6.2 of the Ordinance, it is not an allowed use.

III. Decision.

Based on the above findings of fact and conclusions of law, the Lovell Board of Appeals voted to deny the Administrative Appeal on October 20, 2022, and upheld the CEO's determination.

Vote: 4 in favor, 0 opposed.

The Board met on November 10, 2022 to review and adopt these findings of fact and conclusions of law.

Any party aggrieved by this decision may appeal to Superior Court within forty-five (45) days from the date of the vote to deny the Administrative Appeal, pursuant to 30-A M.R.S. § 2691, Section 19.6(E) of the Ordinance, and Rule 80B of the Maine Rules of Civil Procedure.

Michael Burke, Chair — Signature Date: 11/10/2022

Mark Trip

Jane Williams

Susan Mosca