



TOWN OF WATERTOWN

Zoning Board of Appeals

Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson
Deborah Elliott, Clerk
David Ferris, Member
Suneeth P. John, Member
Christopher H. Heep, Alternate Member
John G. Gannon, Alternate Member

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MINUTES

On Wednesday evening, **September 25, 2013** at 7:00 p.m. in the Richard E. Mastrangelo Council Chamber on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: **David Ferris**, *Acting Chairman*; **Deborah Elliott**, *Clerk*; **Suneeth P. John**, *Member*; **Christopher H. Heep**, *Alternate Member*; **John G. Gannon**, *Alternate Member*. Also Present: **Steve Magoon**, Director, Community Development & Planning; **Mike Mena**, Zoning Enforcement Officer; **Gideon Schreiber**, *Planner*; **Louise Civetti**, *Clerk to ZBA*. Absent: **Melissa Santucci Rozzi**, *Chair*.

Acting Chair Ferris opened the meeting, introduced the board and staff, reviewed the agenda and swore in the audience. He mentioned that it was the last day for one of the members and asked Steve Magoon to make the presentation to Deborah Elliott.

Steve Magoon thanked Deborah for her years of service and dedication to the town by coming to the meetings prepared and offering her expertise. He presented her with a gift from the Department of Community Development and Planning. Ms. Elliott thanked the board and staff. The audience applauded Ms. Elliott.

Acting Chair Ferris requested the meeting be opened and the first legal notice be read.

Member Elliott read the legal notice for 65 Gleason Street:

“65 Gleason Street John and Lucia Broderick, 65 Gleason Street, Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with Watertown Zoning Ordinance §4.06(a), Alterations to Non-Conforming Structures, Front Yard Setback, so as to raise existing 3’6” x 4’4” landing and construct a 4’4” x 7’2” porch with a roof and columns, creating a 20.4’ front yard setback where 25’ is required. ZBA-2013-26”

John Broderick introduced himself and his wife Lucia. He stated that the small landing without a roof or columns is deteriorating. They would like to replace it and in doing so, extend it 10 inches to match the protruding roof element existing and add columns and a roof.

Member John asked about the difference in the setback shown on the plan and noted on the application. Mr. Schreiber said staff considered the plot plan to be accurate vs. the chart in the application. Mr. John indicated that the chart in the application may be correct.

Member Elliott stated that the request is consistent with the neighborhood.

Member Heep agrees and stated that it is a nice addition and consistent with the neighborhood.

Acting Chair Ferris asked if the porch in the photo is made out of wood. Mr. Broderick stated that their porch will be made out of wood except the railings. The deck will be composite material.

No one spoke from the audience.

Member Elliott motioned to grant the Special Permit Finding with standard conditions recommended by the Planning and Staff with the exception of the Condition #7, that the porch not be enclosed. Member Gannon seconded. Voted 5-0.



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Member Elliott read the legal notice:

*"Karen Ziminski, 179 Chapman Street, Watertown, MA 02472 herein requests the Zoning Board of Appeals review an **Appeal of the Determination by the Zoning Enforcement Officer (ZEO)** in accordance with §9.19, where such determination made on August 2, 2013 to cease and desist use of an unauthorized apartment and to bring area back to within requirements is outside the jurisdiction of the ZEO. S-6 (Single Family) Zoning District. ZBA-2013-27"*

Attorney Frank Frisoli, 797 Cambridge Street, Cambridge. He said the issues that have arisen are due to the zoning enforcement officer. He continued by stating there are over 100 properties with accessory apartments that are not recognized as lawful apartments by the records of the town. He said there may have been some discussion on the widespread problem. They would have no objection to a continuance to see if there are other resolutions to this. When the town issues a violation, they have to appeal although they have not had time to have exhausted administrative remedies. Therefore, it was necessary to file the appeal. He looked for a resolution with the ZEO, Mr. Mena to allow his client to exist as a taxpayer in Watertown. He said his client is presently engaged but single and a school teacher in Boston. When she purchased the property, it stated that the use of the apartment was approved by the town. Now the town is saying it is not. She relies on that income to pay her mortgage. She may not be able to keep the property if she cannot remedy this situation. He gave a synopsis of the property, built in 1960. The town records are not complete. However, his client interviewed neighbors that have been here for some time. They say the property was built as a single family with a garage. In 1963, the garage was removed and the basement unit added. In 1971, a building permit was found for a closed-in porch. He said the town building department was aware of the changes since that date but there aren't any records of the change from garage to apartment. It has been there for longer than 10 years. He said the physical changes are grandfathered but the use is not. He also said that this area was zoned as a two-family although he does not know when the zoning change took place in a small segment of the street to a single family district. Therefore, a portion of the street is two-family and this property is in the section that is now single family zoned. The neighbors to this property have accessory units that are rented. He asked why was his client selected when they are not enforcing the other properties. He further said that in 1992 the town had a program where you could apply for a permit for an accessory apartment. One neighbor said they applied and they received recognition that they could continue to use their accessory apartments but he could not find anything in the public records. He said the Zoning officer could not find that information either. He said it is common in other communities for there to be accessory apartments in single family zoning districts. When his client purchased this property in July 2006, the apartment was rented. The tenant moved out and a new tenant was to be moving in when the zoning officer appeared and said it was an illegal unit. There was an order issued and since then, the apartment has not been rented. There is no evidence of violation of the use ordinance at this time. The basement unit had a kitchen area, bedroom and the window in the bedroom is slightly below safety standards. The ceiling height is an inch short of the requirement of 7'. He said the one inch requirement should not be a safety issue as it has been there a number of years. The other issue is what needed to be done to discontinue the use. He said it would be that no one sleeps down in the bedroom. The zoning officer said the circuit for the electric stove must be removed along with the removal of the stove. Mr. Frisoli said the electrical outlet should be allowed to remain as the circuit is not in violation. If the use is then approved, his client then has to pay to have it installed again. If the outlet is just there and not in use, it is not a violation.

Member Gannon asked if the electrical outlet was installed with an electrical permit. Mr. Frisoli said there are no records in the town so he doesn't know. The electrical inspector came and never stated that there was something wrong with the plug – he just said it has to be removed per the ZEO. Mr. Frisoli said there was a permit for the house to be built and this outlet could have been part of that permit.

Mr. Frisoli said the real issue is use. He said in other communities, zoning officers like to have the apartment changed so that it couldn't possibly be used but he believes the building code doesn't require that and the real issue is that the use has clearly been ceased. There has been no problem with inspections. She has no intent to use the property in violation with the law. She wants the property to be re-zoned as a two-family. He thinks this may have been a spot-zoning issue but he has not had a chance to investigate this fully. He said his client is going to lose her house because she cannot pay the mortgage without income. The property was marketed as a multi-family; the assessor's department has it listed as a multi-family, and she is not alone in this problem.

Acting Chair Ferris said the issue is that the town requested the kitchen be removed in a reasonable amount of time. He would like to hear from the zoning officer.

Mike Mena, Zoning Enforcement Officer, stated that the Health Department had inspected this property for an exposed electrical panel next to the bathroom shower. Upon the inspection, they saw the kitchen and questioned its validity. They reported it to him and he investigated then issued a code compliance order. He went there with the Electrical Inspector, looking at the code violations reported by the Health Department and was not there to inspect the kitchen or other areas. Mr. Mena said he identified a full kitchen and the owner identified a bedroom. Without measuring, it appeared the bedroom did not have a high enough ceiling height, the room measured smaller than 70 s.f. and the window did not meet egress requirements. He did search for permitting records and found a building permit issued in 1960 for a single family home. A number of homes, 30 on Chapman Street, were issued building permits for two-families and all of those matched with Assessor's data as being used as two-families. He identified two other properties adjacent to this property that have been issued single family building permits and are Assessed as two-family with unpermitted units. The zoning change appears to have been around 1964, where it was previously known as Residential 2, where 1 and 2 families were allowed. The change was to the area northwest of Warren and King Streets to single family zoning district, leaving the southern portion of Chapman as a T (two-family) zoning district. There were a number of houses that were permitted to convert to two-families and the documents in the town confirm that. This property does not have any documentation other than the building permit stating it was built as a single family. There were no subsequent building permits or occupancy permits. The representative stated that there is a statute of limitations when dealing with building permits and although that is true that structural work done without a building permit is grandfathered in after 10 years, a use is not grandfathered in. (Attorney Frisoli) also stated that there is no documentation in regards to what a use is in the building code. The Zoning Ordinance has a section that defines use and what a two-family is - a two-family is a separate dwelling unit that is used, designed or intended to be used as a separate unit. Since there is a full kitchen, bathroom and a bedroom, rented out as a separate unit. After the code letter was sent, a potential occupant called the zoning office stating that they wanted to move in stating that the owner could not keep the property unless she rented it. The use as a separate unit is well documented. Whether or not it is rented, it is designed and can function as a separate unit that does not meet building code. Staff is empathetic although the town cannot be responsible for what a real estate agent lists a property as. There may be some recourse with that listing. There cannot be any assumptions made as to the use in 1960 without documentation. The town has to look at what is in the public record.

Chair Ferris clarified that the board is listening to this case tonight to make a determination because the town has asked that the kitchen be removed and the owner is appealing asking to override the necessity to override that requirement. Mr. Mena stated that by removing the kitchen, the unit is no longer designed or can be used as a separate unit. Member Gannon asked if Mr. Mena observed the unit and if the unit had construction material and processes used around 1960 when the house was built. Mr. Mena could not make that determination. Mr. Gannon asked if there were electrical and plumbing permits. Mr. Mena said he did not seek out those permits, his focus was on building permits as this required a building permit. The building permit clearly shows that this was not constructed as a two-family.

Chair Ferris said it looks clear from the photos that the house was built as a single family with a garage under and the front of the house was changed by the garage door becoming a window.

Attorney Frisoli said if the zoning change took place in 1964, they may be able to obtain enough information to show the conversion to add this unit, 1963 to allow this to be grandfathered and this could be brought up to today's code. He would like a continuance to pursue that. They have not been able to contact the predecessor in title. The neighbors say the conversion from a garage took place in 1963. He'd like to see if they can find evidence that it was changed over prior to the zoning change. His client has always been willing to conform to building codes. They have been looking for a reasonable solution.

Mr. Magoon stated that the applicant is in a difficult situation. The town is trying to enforce the zoning regulations as written. There is a tremendous issue in town dealing with illegal units. They spend time with people that have issues with neighbors that have created units illegally. There are many reasons for doing the investigation and spending a lot of time looking into these units. One is the safety of people that rent these apartments. The town wants to be certain these units are to code and are safe. This situation does not have an appropriate size window and if someone is trapped in that bedroom and unable to get out, that is what the building code is there for. It is important from the town's perspective that there isn't a tenant in that space.

Attorney Frisoli again stated that there isn't a tenant in that space and his client will allow the town to inspect at any time. He is looking for a continuance for 30 days to get evidence and affidavits that this has been grandfathered and then they will address the safety issues. Nobody wants to see a tragedy or to see someone get hurt. They are looking for a short period of time to research that this garage had been converted to a residential unit prior to the change in the zoning code.

Mr. Magoon said that the town is looking for compliance and if the applicant would like to continue this case to provide evidence, then it would be supported.

Chair Ferris reiterated that this is a one month continuance.

Mr. Mena said that affidavits typically do not provide for evidence of a legal use. This is not a court of law, not held for perjury. A building permit or occupancy permit or something recorded in a public record would be hard to conclude that the unit was constructed year and date were not constructed legally. In 2000, there was a code compliance request in regards to this unit; however, there is no follow-up record on file. Prior to him becoming the Zoning Enforcement Officer, most code issues do not show a record of conclusion other than if they received a building permit. In 2007, another code case on this property as to an accessory structure and that was corrected – it appears that there is a history of this unit being a code compliance issue.

Member Gannon stated that when he was an attorney for the town 20 years ago, he helped draft a program for conversion to legal units. There was a cross reference between zoning records and assessor records created. If a record showed a multi-family use, and zoning and building permits showed a different use, then those owners were notified to seek an accessory permit from the Zoning Board. The only applicants that did receive permission were those that were permitted, were lawfully there, or could be made lawful not for just the existing use – if there were one means of egress, and the building permitted constructing a second means of egress then that was permitted. There was a public outcry regarding safety issues on these accessory units – one issue being someone could get trapped in the unit. He has seen first-hand the aftermath of these illegal units. The insurance companies would not pay anything for a fire in an illegal unit. Therefore, the property owner is in jeopardy as well as the neighbors who may have damage to their properties from the fire. Mr. Gannon suggested that staff look into whether this address applied for an accessory apartment at that time.

Mr. Mena stated that there was research done and this property and there were other properties on Chapman Street that were granted accessory apartment status.

Attorney Frisoli said one block of 14 houses are in a single family zone and the rest of the street is a two-family zoning district. He asked if he heard correctly that there are other properties on Chapman Street that were granted accessory apartment status.

Member Ferris said the neighborhood that this house is in is clearly single family construction and there is another area on the street that is clearly two-family construction. He believes the question at hand is whether you would like to do a continuance and do the research to provide to make your clients request happen and that would be within the one month time frame.

Attorney Frisoli said construction people can be brought in to look at this. He said his client has asked for the town records and the town records are not there.

Member Ferris stated that they should then deal with the case tonight as the evidence required is town records. Mr. Mena said that if there is a licensed contractor that would state that the house was built and the building would confirm that then that may satisfy the grandfathering. Attorney Frisoli said the construction is not original. The house was built with a garage and at some point the garage was removed for this unit. He suggests that they could document people that were present at the time that happened. He understands the town does not accept affidavits but the town can take whatever action it wants to enforce zoning codes. Member Gannon asked Attorney Frisoli when he last cross examined an affidavit.

Member Ferris asked if they are going to allow a continuance. Mr. Magoon said if the applicant can find evidence and bring that forward – as long as the unit is not occupied.

Member Heep said to make their best case in terms of what evidence – if there is factual information to support their position bring it forward within the next 30 days. Referred to anecdotal – factual information. Atty Frisoli brought to the board everything so the board could accept or reject it.

Member Elliott asked what happened in 2009 that required the Assessor's Office to reevaluate the property. Mr. Magoon explained that every 3 years the Assessor's office reevaluates all properties for tax purposes and found this property to be used as a two-family at that time and therefore, taxed it as such.

Karen Ziminski, owner of 179 Chapman Street said she was told by the Assessor's office that they have tried to get into the house to reevaluate it for years and was unable to do so. She owned the house in 2009 and she let them in.

Member Elliott said her primary concern is public safety. She is not comfortable saying this is okay – it does not meet state building code and there is not proper egress. Safety is our first priority. She is in not in support of a continuance if the town does not have any documentation on this being converted to a two-family she doesn't see how the petitioner is going to find any public records on the conversion. That would be just dragging this out another 30 days.

Attorney Frisoli said his client would comply to state building issues and there would not be any safety issues. That would not be a concern for the board. Ms. Ziminski said it is empty right now and she will not rent it or put money into it to bring it up to code if she is going to have to sell it.

Member Elliott reiterated that the house is in a single-family zoning district not a two-family zoning district. Atty. Frisoli said zoning is up to the zoning board in the town. Member Gannon added that the zoning district is not discretionary.

Member John said he did not have any questions; however, if there is not much evidence to be made then why continue.

Mr. Magoon clarified that what is before the board is an appeal to the determination of the zoning enforcement officer that there is an illegal unit. There isn't any question that it is an illegal unit. There isn't anything in the record showing that the unit was added. However, if the applicant can prove that they have evidence, then the Zoning Enforcement officer would have to change the determination.

Member Ferris asked if the board made a determination tonight and allowed the petitioner to come back with evidence then he would come back to address the board. Mr. Mena said staff would have no objection to a 30 day continuance – we are confident that the unit is empty.

Member Gannon asked if there are separate meters in the unit. Ms. Ziminski said there is one meter; one furnace; two heat zones. It is the original heater from 1960. Member Gannon said that there would be one 30 day continuance where there could be unannounced inspections otherwise, he would not vote for a continuance.

Member Ferris said there are danger issues with someone sleeping in a room with basement windows and this unit does not have egress windows in the bedroom and an electrical issue in the bathroom is another issue. Also, a person sleeping next to a furnace – if something were to happen, it is more likely to occur at the furnace.

Member Ferris asked if members of the audience could address the issue. Mr. Mena said people could bring their opinions and history forward.

Mae Bianco lives in the house next door. She wants to know why after all these years this was never addressed. The house across the street burned down and they had to inspect that. How could this have gone on all of these years. How could this happen. She said safety is a big issue and why couldn't she bring this up to the standards. She said this was built in 1960 and people have used it as a rental even before she owned it. She wants to know if someone had to come in and look at the whole place when she bought the house.

Member Ferris said the board wants to know these answers, as well. Mr. Magoon explained that primarily we operate on a complaint basis and it is Mr. Mena's responsibility to enforce the zoning code. If he were to go out proactively to enforce the zoning violations, he could do this all day long. Someone brought this to his attention and asked him to look into it.

Angela Denucci lives across the street and asked why she pays taxes for a two family and will she then pay taxes for a one family and get reimbursed. Mr. Magoon explained that the Assessor's purpose is to assess the use of the property and tax that property on what they find. The zoning records are not the same as the Assessor's records, in this case. If the assessment changes to a single family, she'll be taxed as a single family. She is paying taxes on a two family as it was used as a two family. The property wasn't taxed as a two-family prior to 2009 but was used as a two-family. There would not be a reimbursement.

Member Gannon added that there is a 3 month period to appeal an assessment. If there hasn't been any appeal to the assessment, then there hasn't been any issue.

Member Ferris announced the business mode since no further audience members stepped forward to speak. Member Heep said he would support the 30 day continuance so they can bring any further evidence forward. Member Elliott is not in favor of the continuance as the 30 day appeal is already built in to the time frame. Member John would support a continuance. Member Gannon would only support a continuance if unannounced inspections were allowed 3 times during the month.

Member John motioned to allow a continuance for 30 days with 3 unannounced inspections within those 30 days.

Mr. Magoon asked that the motion be corrected to 'the next zoning board meeting' so that the day is correct. Member Ferris corrected the motion to: 'until the next zoning board meeting with the stipulations Member Gannon stated'. Voted 4 in favor; 1 against. Member Elliott voted against the continuance.



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Member Elliott read the legal notice:

*"152 Bellevue Road Ara G. Barsoumian, 152 Bellevue Road, Watertown, MA 02472 herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with Watertown Zoning Ordinance §4.06(a), Alterations to Non-Conforming Structures, Front and Rear Yard Setback and Building Coverage, so as to construct an attached lower level 2-car garage with patio above, maintaining a non-conforming rear yard setback of 9.20'-9.75, where 20' is required; creating a non-conforming building coverage of 34%, where maximum allowed is 25%; further extending deck across front and constructing a front portico, within existing non-conforming front yard setback of 15'±, where 25' is required. S-6 (Single Family) Zoning District.
ZBA-2013-25*

Attorney Stephen Parnagian presented the petition. The board conditioned the request to add more landscaping across the front of the driveway, where the plan currently shows a 3'x3' landscaped area and to change the retaining wall façade to stone and to add a landscape vine to break up the mass of wall area. The board also suggested the petitioner look into moving the utility pole to gain a driveway opening with straight access to the garage from the street.

Member Deborah Elliott motioned to grant the petition with the conditions discussed. Member Suneeth John seconded. Vote 5-0 in the affirmative with Member Santucci Rozzi absent.

Member Ferris thanked Member Elliott for her professionalism and for serving the town. Member Elliott motioned to Adjourn. Member Gannon seconded. Voted 5-0.