



**TOWN OF WATERTOWN**  
**Zoning Board of Appeals**  
Administration Building  
149 Main Street  
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson  
David Ferris, Clerk  
Christopher H. Heep, Member  
John G. Gannon, Member

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MINUTES

On Wednesday evening, April 23, 2014 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: Melissa Santucci Rozzi, *Chair*; David Ferris, *Clerk*, Christopher H. Heep, *Member*; John G. Gannon, *Member*. Also Present: Gideon Schreiber, Mike Mena, and Louise Civetti.

Chair Santucci Rozzi opened the meeting. She then introduced the rest of the Board and Staff. Chair Santucci Rozzi noted that 85 Walnut Street would not be discussed this evening as that application had been withdrawn. She also noted 202-204 Arsenal Street/58 Irving Street would not be discussed, and that the Planning Board would hold a special meeting on May 8, 2014 to discuss the 202-204 Arsenal Street/58 Irving Street petition.

Chair Santucci Rozzi said 33 Mount Auburn Street would also not be discussed this evening, as the Petitioner had requested a continuance to the May Board meeting. She noted that under the Board's Continued Case, 86 Madison Avenue will also not be discussed at this evening's meeting.

Chair Santucci Rozzi said the Cases before the Board at this meeting would be 41 Lowell Avenue, 1 Dana Terrace and a continued hearing for 238 Bellevue Road.

Chair Santucci Rozzi swore in those providing testimony to the Board. She also admonished the audience to come to the podium when providing testimony and to keep their testimony focused on the cases before the Board.

Clerk Ferris read the legal notice for 41 Lowell Avenue:

**41 Lowell Avenue - Kevin and Nancy Donahue, 41 Lowell Avenue, Watertown, MA 02472, herein requests the Zoning Board of Appeals grant a Special Permit Finding in accordance with Watertown Zoning Ordinance §4.06(a), Alts to Non-Conforming Structure; Side Yard Setback, to construct a single-story rear addition 24'6" x 7'6", maintaining easterly side yard setback of 6', where 12' is required. T (Two-Family) Zoning District. ZBA-2014-11**

Mr. Donahue, the Petitioner, said he was seeking a Special Permit to build a one-story addition off the rear of an existing house in the T-zone. He acknowledged the lot did not meet the required setbacks. Ms. Donahue said the purpose was to provide additional space for family visitors, including a new bathroom.

Clerk Ferris asked about the exterior siding, and how it would match the existing exterior? He asked if it was vinyl?

The Petitioner's builder said it was vinyl would be wrapped around, and the new would match the old.

Chair Santucci Rozzi noted the addition was going to be on the existing deck and that there would not be any expansion of that deck area/foot-print.

The Builder noted the Planning Board had suggested a certified "As Built" be done on the foundation, Note #5. He said there is no foundation. It is up on sonotubes and piers.

Chair Santucci Rozzi asked members of the audience to present any questions or comments. Seeing none, she closed the public hearing.

#### Board Business Session

Chair Santucci Rozzi noted the Petitioner was requesting a Special Permit Finding, with a non-conforming side yard setback of approximately 5 feet where 10 is required. She noted the Planning Board met on April 9, 2014 and recommended unanimously for approval. She noted there was no correspondence in the file. She noted Mr. Pelletier had brought to the Board's attention Condition #5 in the Planning Board Report. Certified foundation plot plan required. Construction is on sonotubes. Does staff want more information? Is the condition to verify that the addition will not encroach further into the setback?

Mr. Mena addressed the Board. Purpose is to ensure no further encroachment. Would be amenable to survey markers in the field, so that the existing setback can be clearly delineated.

Chair Santucci Rozzi suggested based on Mr. Mena's comments that Condition #5 could be revised.

Clerk Ferris noted that sonotubes are round. The addition will be slightly closer than the existing side wall.

Mr. Mena clarified that the in-the-field measurement would be to the side wall of the addition.

Chair Santucci Rozzi asked for a motion. Clerk Ferris moved to approve the application for alternations to a non-conforming structure, for the addition, including the revised conditions. Member Heep seconded the motion. **Vote: 4-0 for approval.**

Chair Santucci Rozzi informed members of the audience that came in late of the cases that would not be discussed by the Board at this evening's hearing.



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Clerk Ferris read the legal notice for 1 Dana Terrace:

"1 Dana Terrace Richard J. Parrella, 50 Waterman Road, Canton, MA 02021, herein requests the Zoning Board of Appeals review an Appeal of the Determination by the Zoning Enforcement Officer (ZEO) in accordance with §9.19(a), Right to Appeal ZEO, where such determination made on October 8, 2013 to cease and desist use of an unauthorized apartment and to bring area back to within WZO requirements, is outside of the jurisdiction of the ZEO. Located in the T (Two-Family) Zoning District."

Chair Santucci Rozzi invited Attorney Leitner to make the Petitioner's presentation. She said the staff would then provide an update.

Attorney Leitner, representing the Pirella family, Petitioners, said the family has owned the property since 1953. He said the Petitioner disagrees with the cease and desist. He said once they received the notice, they removed the tenant, bringing the structure down to a 4-family. He gave the Board residence lists. House was bought in the 1830's. Operated as a 5-family since the early 1900s. Permit pulled in 1976 which referred to the house as a 4-family. Petitioner's contention is that it was used prior to that date as a 5 unit. Don't disagree with the 1976 permit, but believes the reference to the house occupancy in that permit is a clerical error. Believed that a complaint lodged with Nancy Scott in 2009, the then-Zoning Enforcement Officer, was not followed up on because a determination had been made that all the units were legal. A lot of permitting was done with handshakes because Mr. Pirella was a former Watertown Police Captain. Building records are not clear. Residence list shows 5 families living there in 1939. Residence lists were also somewhat inaccurate. Sometimes show 4 families. Probably harder to rent in the height of the Depression. Address has 5 mail boxes. Want to come to a consensus on the building's use. Suggest that the property has always been used as a 5-family.

Chair Santucci Rozzi asked where did the residence list come from? She suggested a photocopy of the Clerk's records would have been more helpful.

Attorney Leitner said one of the Pirellas put together the list from the Clerk's Office. He said the gentleman hand-copied the list.

Mr. Mena addressed the Chair and Board. He noted the Board had received the staff report and other handouts. Appreciate the Petitioner's work to put together other documentation. Started in 2009 with a Health Department Code case. Referred to the Zoning Enforcement Officer. Health Department identified the house did not meet Code because the apartment in question did not have sufficient ceiling height per Building Code. He noted the Zoning Enforcement Officer determined at that time that the unit was an un-permitted unit. He said the Health Department closed their Code case because the unit was

vacated. The Health Department did not require that the kitchen be removed, to revert the space back to an attic. He said the Code Enforcement Officer's letter did require that, but there is no documentation that that action was ever taken. This is not unusual. Most Code cases don't have documentation of an ultimate resolution. Mr. Mena noted in 2013, his office received a complaint of parking on the street, and a possible unpermitted unit. He sent a letter to the owner, and upon inspection, found a unit and a tenant in the attic, who was in the midst of moving out at that time. Mr. Mena did a substantial search of public records, and could not find any records of a Building Permit issued for a fourth unit. He acknowledged the 1976 permit for a bathroom in the attic, a dormer and stairs to the attic. He said the permit did not reference that this was to convert the attic to a separate unit. Noted the Petitioner's Attorney states this may have been a clerical error. Mr. Mena disagreed with this as the application form was filled out by the property owner, who hand wrote in the notation for four units. He noted this was not a clerical error by Town Staff. Mr. Mena noted that it was not until 1991 that the Assessor's Records show the property as a 5-unit residence. He has not had a chance to review the Petitioner's data submitted today. Even so, don't believe the list of names submitted by the Attorney today is not enough to trump what is currently in the public record. As such, Mr. Mena said it was staff's recommendation that the Zoning Board of Appeals uphold the determination of the Zoning Enforcement Officer, and require that within 30 days, that the permits be provided to show that the kitchen was removed.

Chair Santucci Rozzi asked the Board Members if they had any questions?

Member Heep asked about code issues in the 5<sup>th</sup> unit. He noted that there appears to be a ceiling height issue. He asked if there were other code issues with that unit? He asked if the unit could be valid via zoning but not the Building Code due to the inadequate ceiling height?

Mr. Mena responded to Member Heep that no other code issues had been identified at this point. Mr. Mena said Mr. Heep was correct. The 1976 Building Code would have required a greater (taller) ceiling height than under today's code, if one attributed creation of the unit to the 1976 timeframe. He said the zoning district since 1924 has only been for Single Family or Two Family. No record of a use variance.

Member Gannon asked Mr. Mena for clarification, noting that the Assessor's records do not show legal significance to the unit or units?

Mr. Mena responded correct. It's simple taxation on the use present, but does not legalize that use.

Chair Santucci Rozzi asked Mr. Mena to clarify the property's Assessor's data.

Mr. Mena said from 1919 to 1957, it appears the property was assessed as a Single Family. He said the records then show from 1973 to 1986 as a 4-Family. Not until 1991 do the Assessor's records shown a 5-Family residence.

Chair Santucci Rozzi noted that the Assessor's records have no bearing on zoning legality. She noted that the typical route is that the Assessors tax on what they see. If the Town did not pick this up until 1991, that does not provide the units any protection.

Attorney Leitner said the records are not dispositive. They do not have bearing on the zoning. Indicates that the property was used as 5 units prior to the zoning map in 1937.

Chair Santucci Rozzi asked about the names on the list?

Attorney Leitner said this was listed as three apartments. He suggested that if the Board would allow, they could put together the resident listings in a more comprehensive, and consistent fashion. Could infer that the property was used for 5 residences.

Clerk Member Ferris noted he had visited Dana Terrace and the parking. He asked if it was a public way or a private way? Ceiling height of the 5<sup>th</sup> unit? He suggested it was also below what it should be.

Mr. Mena said Dana Terrace is a private way. He said the parking is historically as is. Parking is where it is available in front of the units. He suggested the ceiling height was under the required 7 feet.

Chair Santucci Rozzi said there are a number of residence lists in the file. She asked the Petitioner's Attorney if he had submitted these?

Attorney Leitner said no; he suggested these had been assembled by his client. He said the issue of ceiling height could be remedied if the Board were to determine that there were 5 units. Lower the roof pitch but raise the ceiling height. Determine that it's a prior non-conforming site.

Clerk Member Ferris noted the site was zoned T-Two Family.

Chair Santucci Rozzi asked how many parking spots were there on the site, on the property?

Attorney Leitner said it was not clear. He said the street is a private way.

A voice from the audience said 7 on the frontage and a garage, and a strip of parking by the garage.

Attorney Leitner said there appears to be ten spaces for this property, all non-conforming.

Clerk Member Ferris asked about the permitting history, noting that in 2009, when the unit was vacated, it was to Town's assumption that it remained vacant. However, he noted that the unit was re-occupied. Why was the property re-occupied when the owner received notice that it should not be?

Attorney Leitner said the owners received a letter, but nothing further. He noted the tenant had left, but there was not final determination of record with respect to any illegality.

Mr. Mena said the Health Department's code case was related to the Building Code, and insufficient ceiling height. It was the Health Department's requirement that the unit be vacated. The Zoning Enforcement Officer's code case was to remove the kitchen, but there is no record of how this code case ultimately resolved itself. He said the unit was vacated.

Mr. Richard Pirella said he had met several times with Nancy Scott, the prior Zoning Enforcement Officer. He said he does maintenance on the property. He said Nancy clashed with the prior owner, his Mother. He noted that Ms. Scott had indicated to him that as long as his Mother was alive, Ms. Scott would no longer pursue the issue, and rather, turned the matter over to the Board of Health. He said the tenant was moving out. She was not vacated per the Town. He said Ms. Scott had said she was done with the matter.

Ms. Cynthia Pirella said a recollection she had is that she had written a letter to Ms. Scott, and never received a response. She said Ms. Scott then retired. She said the family is not trying to hide anything. Small units occupied by professionals. Mr. Mena has been cooperative. Paying taxes as a 5-unit.

Chair Santucci Rozzi said there is historic data showing that from 1919 to 1957 it was listed as a Single family. She noted that the records then show from 1973 to 1986 as a 4-Family. As such, the Chair noted that the Pirella family was not paying taxes on the property as a 5-Family until recently. Disagrees with Ms. Pirella.

Ms. Pirella said this probably occurred when her parents were alive. Only took over after her Father took ill in the early 1990's. She indicated this was the time period she was speaking to with regard to paying taxes on a 5-Family.

Chair Santucci Rozzi asked for other staff comments.

Mr. Mena said staff did not have further comments.

Chair Santucci Rozzi asked for any further comments from the audience? Hearing none, she closed the hearing.

Board Business Session

Member Heep said the Compliance Order from December 2013 has dates in it that are now come and gone. He said what the next steps were?

Mr. Mena said the staff's preferred time line would be that the Petitioner would submit for Building Permits within 30 days of the Board's decision to complete all electrical, plumbing, and gas fitting to disassemble the kitchen, and to have the unit re-inspected.

Chair Santucci Rozzi asked for a motion.

Member Heep moved to deny the appeal of the Petitioner, and to affirm the Code Compliance Order of the Zoning Enforcement Officer dated December 5, 2013 to require that the Petitioner seek a Building Permit within 30 days to seek disassembly of the 5<sup>th</sup> unit, and to complete all work within 30 days.

Member Gannon seconded the motion. **Vote: 4 – 0 to affirm the Code Compliance Order and to deny the appeal.**



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### **CONTINUED CASE: 238 BELLEVUE ROAD**

Clerk Ferris read the legal notice for 238 Bellevue Road:

"238 Bellevue Road - Robert Paarlberg and Marianne Perlak, 238 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), Alts to Non-Conforming Structure; Side Yard Setback, so as to construct a second-story addition above an existing non-conforming sunroom; maintaining westerly side yard setback of 5.8-6.0', where 10' is required. S-10 (Single Family) Zoning District. ZBA-2014-07"

Chair Santucci Rozzi asked the Petitioner to update the Board. Look at alternative roof lines.

Mr. Paarlberg addressed the Board. He said he was seeking a Special Permit Finding to extend the second floor master bedroom. He noted questions were raised about the roof line. Asked to develop other options. Created two additional options. Option B – Dutch Colonial roofline. Option C – Hip roof approach. He noted he and his wife were strongly attracted to Option B. Creates original interior footprint, but give more interior ceiling space. Conforms to existing roof lines and pitches. Seek to abandon Option A, which had been their original scheme. Please consider Option B. Thanked the Board and the staff to come up with a better solution.

Chair Santucci Rozzi asked for any Member questions. Noted Clerk Member Ferris had suggested Option B.

Clerk Ferris had questions for the Builder. Thanked the Petitioner to come up with options. Option B – Gambrel scenario. Confirm constructability. Referred to Drawings SK8 and SK7. Are things in line? Bottom of the front wall meeting the sloped roof. Roof is longer on the front elevation.

Builder responded he had the same question for the architect. Needed to make sure whether this was cantilevered or not. Discussed shingle and railing details with Clerk Ferris. He said it appears to be a 12-pitch. Bring that angle really any more, it would create a Mansard roof. Understand Member Ferris's comments.

Clerk Ferris said the roof line does not have room for a decorative railing. Suspect that if Petitioner wants to retain the rail, the steeper Gambrel component needs to move back towards the back of the lot. Can be amended, but it creates a smaller Gambrel. Push the pitched roof back. Turn the triple window to a double window.

The Petitioner said that it would be nice to retain the railing on the side of the house, but it might not be possible to retain it on the front.

Clerk Ferris said he would support either alternative option. Note to the Petitioner that he is not getting the roof line and appearance he would think the house is going to have from the submitted drawings. More to ensure the Petitioner is satisfied with what is ultimately constructed.

The Petitioner said the original roof construction is completely depicted.

Chair Santucci Rozzi asked if the other Board members were satisfied with Option B?

The other Members responded that they were satisfied with Option B.

Chair Santucci Rozzi asked if there is a flaw in the drawings, but that Option B is approved, that the details of the construction could be worked out at the time of the Building Permit.

Member Gannon asked if the Chair was suggestion that the Petitioner work with staff to develop drawings that reflected the Board's wishes, and support for Option B.

Chair Santucci Rozzi said the Board could specify the Dutch Colonial roof line on the addition. Not so much worried about the architectural details such as the railing. This allows the Petitioner to move forward.

Chair Santucci Rozzi asked for any public comments? There were none.

Chair Santucci Rozzi noted the Petitioner had addressed the Board's comments from the last meeting. She noted the Board supports Option B. Noted the Planning Board recommended conditional approval. Support from the neighborhood. Noted the Planning Board conditions were standard. Amend Control Plans to reference Option B as discussed this evening. Ensure Dutch Colonial roof line is used.

Clerk Ferris suggested the Petitioner may have some difficulty pursuing the Gambrel. Approve Option B or Option C. Provide some additional flexibility.

The Petitioner said he prefers Option B.

Builder said he sees no problems with Option B.

Chair Santucci Rozzi asked for a motion?

Clerk Ferris moved to approve the modified application for an addition affecting the side yard setback reflecting Option B, with details to be worked out with staff. Member Gannon seconded the motion. Vote: 4 – 0 to approve.



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### **OTHER BUSINESS:**

Chair Santucci Rozzi noted the Board had received a formal extension request from 33 Mount Auburn Street. She noted that hearing had not yet been opened. She said the Board should vote nonetheless to continue it to the May meeting.

Member Gannon moved to accept the request for a continuance from 33 Mount Auburn Street, and to continue the case to the May Board of Appeals meeting. Member Heep seconded. **Vote: 4-0 to approve the extension of 33 Mount Auburn Street.**

### **ADJOURN**

Mr. Heep motioned to adjourn the meeting. Mr. Gannon seconded. Voted 4-0, meeting adjourned at 8:06 PM.