

**Maynard Zoning Board of Appeals – Meeting and Public Hearing
February 22, 2021 – 7:00 p.m.
(Held remotely via Zoom due to COVID-19)**

Board Members Present: Paul Scheiner – *Chair*; Marilyn Messenger; Leslie Bryant; Jerry Culbert; John Courville; Page Czepiga

Others Present: Bill Nemser – *Town Planner*; Kaitlyn Young – *Assistant Town Planner*; Rick Asmann – *Town Building Commissioner*; Christine Tree – *Attorney*; John Morreale, Sr. – *Property Owner of 16 Waltham Street*

Called to Order at 7:00 p.m. by Paul Scheiner

Approval of Minutes – 11.23.20

Leslie Bryant made a motion to approve the Minutes dated 11.23.20, which was seconded by Jerry Culbert.

The Board voted unanimously in favor of the motion.

16 Waltham Zoning Decision Appeal

Paul Scheiner read the subject announcement.

Attorney Christine Tree presented some background on the appeal. She stated that her client, property owner John Morreale, Sr., had requested a zoning determination letter for allowable use on the subject property. He had received a determination letter from Building Commissioner, Rick Asmann, to which he responded with a letter of appeal. Christine Tree explained that, based on Massachusetts state law, with a five-member Board, four of the Board Members must vote in favor of the appeal in order to sustain it.

Christine Tree presented an image of the property and stated that it is located within the business district. She reviewed some of the basic property information and presented a zoning map to show exactly where the property is located within the town zones. She also reviewed the original site plan approval from 1987 and indicated that the Building Commissioner at the time noted that it was built to plan. There was a written site plan approval from the Planning Board at that time. The approvals were recorded with the Registry of Deeds prior to construction. The property includes five units with two on the top floor, two on the ground floor, and one in the basement. It is currently being used as four residential and one commercial.

The property was recently placed on the market for sale, and when potential buyers researched the allowable use, they were told by the Building Commissioner that there could only be one residential unit and four commercial units. Christine Tree began researching all documentation available on record at

Town Hall related to the property. She was unable to retrieve any documentation from the 1987 Zoning Ordinance. Therefore the appeal is based on the fact that there is no proof of what the Zoning Ordinance was in 1987 or that the current use was not permitted at the time. Rick Asmann later sent a copy of the Zoning By-laws dated July 1986 to Christine Tree with additional information about his determination.

Rick Asmann stated that the original site plan approval was given for a residence described as having approximately 800 square feet of residential space and 2200 square feet of retail and business space. A building permit was issued subsequent to that. He noted that it's clear what was intended by the site plan proposal. Prior to the current building, there was a pre-existing, non-conforming, single-family house. Rick Asmann indicated that, although the ZBA should have been involved when the property was converted in 1987 in order to approve a dimensional variance for the new structure, it was not. Therefore, the building was not in compliance at the time it was built and is not in compliance now. He explained the specifics of various statutes of limitations, but noted that there is no statute of limitations for a property that is not in compliance with a building permit. He stated that there are other means by which to resolve the issue other than appealing the determination and that approving the appeal does not protect a future owner of the property from the non-compliance. He indicated that they can request a special permit with a variance approved by the ZBA. Because of the zoning by-laws of the Business District, there are no options for compliance within that district. He also stated that a multi-family property is allowed with the Downtown Overlay District (DOD) by right if there are 1500 square feet of lot area per dwelling unit. Another option within the DOD would be to make some or all of the units affordable. In pursuing one of those options, there would be no non-conformity.

Rick Asmann's recommendation for the best use of the building would be to have business or retail in two of the units and residential in three, by right under the DOD, though he does not know how that would impact the parking requirements. He noted that if the ZBA upholds his determination and the current owner chooses not to move forward with one of the options mentioned, then his office would have to pursue an enforcement action given that he is now aware of the non-compliance.

Christine Tree noted that Rick Asmann confirmed in his determination letter that the structure itself is a pre-existing, non-conforming structure. As such, Christine Tree stated that the issue at hand is the use of the property. She presented her two arguments in support of the appeal based upon sections 6 and 7 of the Massachusetts General Law Section 40A. She further noted that construction took place with knowledge and permission of the town and, more specifically, the town's building department. She reviewed the specific By-laws for the various districts that are outlined in the 1986 Zoning By-laws she had received from Rick Asmann. She believes that the issue is simply a matter of interpretation, and she pointed to several sections of the By-laws that she believes support her interpretation. She pointed out that a Table of Uses would be helpful in interpreting the 1986 By-laws, but that she was not able to obtain one if one did exist at all. Christine Tree also presented various supporting documents showing that the town was aware of the use of the building, such as fire inspections, assessor's records, and other supporting information.

Rick Asmann indicated that if the ZBA upholds the appeal, he will speak with Town Counsel and counter-appeal. He left the meeting at 7:57 p.m.

John Morreale, Sr. introduced himself and stated that he is a current building inspector and has been in construction since graduating from high school. He has done work in both Maynard and other

surrounding towns. He pointed out that utility companies would require a valid permit before turning on utilities at a property, which would indicate that the town's utility inspectors at the time would have been aware of the use of the property.

Marilyn Messenger had to depart the meeting at 8:14, at which time Page Czepiga became an Acting Member for the remainder of the hearing.

Christine Tree stated that, if the ZBA upholds the appeal and finds that the subject property is a protected pre-existing, non-conforming use under Section 6, then it would be entitled to protection, which means there would be limited procedures for modifying or expanding the building. Under Section 7, if it is a use that's protected by the existence of a building permit with more than six years without enforcement, it is not considered a pre-existing, non-conforming use but rather a use under which no enforcement action can be taken. If a subsequent owner wanted to modify, reconstruct, or otherwise change the building, they would not be able to take advantage of the limited procedures allowed for protected pre-existing, non-conforming uses.

Christine Tree also referred to the 2020 Master Plan for Maynard and noted that the existing use of the property supports the goals of mixed use in downtown. She presented other large residential and mixed use buildings in the same area and pointed out that the property would not detract from the neighborhood if the appeal was granted.

Christine Tree stated that she would be willing to speak with the Commissioner and Town Counsel to discuss the issue in more detail before a decision is made. She requested a continuance of the hearing.

Leslie Bryant made a motion to continue the Public Hearing to March 22, 2021, which was seconded by John Courville.

The Board voted unanimously in favor of the motion.

John Courville made a motion to adjourn, which was seconded by Leslie Bryant.

The Board voted unanimously in favor of the motion.

Adjourned at 8:32 p.m.