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BELMONT, MA

CASE NO. 19-05

2019 JAN 22 PM 3:17

NOTICE OF PUBLIC HEARING BY THE
BELMONT ZONING BOARD OF APPEALS

ON APPLICATION FOR INTERPRETATION OF ZONING BY-LAW

Notice is hereby given that the Belmont Zoning Board of Appeals will hold a public hearing on Monday, February 4, 2019 at 7:00 PM in the Art Gallery, 3rd floor, Homer Municipal Building, 19 Moore St., to consider the application of Joshua M. Alper, et al to appeal the decision of the Inspector of Buildings that §4.2.2 B (2) of the Belmont Zoning By-Law should apply to Existing Buildings in the Single Residence C (SRC) zoning districts.

ZONING BOARD OF APPEALS



Town of Belmont

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APPLICATION FOR INTERPRETATION OF ZONING
BY-LAW

Date: _____

Zoning Board of Appeals
Homer Municipal Building
19 Moore Street
Belmont, MA 02478

To Whom It May Concern:

Pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 9, as amended, and the Zoning By-Laws of the Town of Belmont, I/we the undersigned, situated in the neighborhood of 65 Clark Street, hereby apply to your Board for a clarification of an interpretation of the Zoning By-Law for the erection or alteration of dwellings or the use thereof under the applicable Section of the Zoning By-Law of said Town for,

The Board to determine if section 4.2.2 B (2) applies to existing
buildings

on the ground that the same will be in harmony with the general purpose and intent of said Zoning By-Law.

Signature of Petitioner _____

Print Name _____

Address _____

Daytime Telephone Number _____

January 7, 2019



Town of Belmont

RECEIVED
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BELMONT, MA

2019 JAN 22 PH 3: 17

APPEAL FROM ISSUANCE OF BUILDING PERMIT

Date: January 7, 2019

Zoning Board of Appeals
Homer Municipal Building
19 Moore Street
Belmont, MA 02478

To Whom It May Concern:

Pursuant to the provisions of Massachusetts General Laws, Chapter 40A, §§8, and 15, as amended, and the Zoning By-Laws of the Town of Belmont, I/we the undersigned, abutters, and abutters of abutters within 300 feet of 65 Clark Street, appealed on December 18, 2018 from the issuance of a Building Permit for proposed construction of a four car garage containing 1,239.56 square feet of first floor space with a habitable second floor of equal size at 65 Clark Street, Assessors Parcel 31-33, located in an SRC Zoning District on the grounds that pursuant §1.5.4(B)(2) of the Zoning By-Law the proposed construction increases the Gross Floor Area ("GFA") of the dimensionally nonconforming structure by more than 30% either (a) as a standalone application in and of itself, or (b) when combined with the GFA added to the structure during the five year period preceding the date of the Building Permit application, such that construction of the proposed garage constitutes a structural change which requires a special permit from the Planning Board.

Signature of Petitioner

Joshua M. Alper, et al

Print Name Joshua M. Alper, et al

Address 70 Clark Street, Belmont, MA 02478

Daytime Telephone Number 617.646.2227

January 7, 2019

2018 DEC 18 AM 8:11

APPEAL FROM RULING OF BUILDING INSPECTOR

December 18, 2018

Petitioners: Nancy I. Sommers and Joshua M. Alper, 70 Clark Street;
David Townsend and Sara Townsend, 47 Clark Street;
Ian Watson and Alexandra Charberie, 67 Clark Street;
Edward F. Carye and Christine A. Carye, 15 Kilburn Road; and
Linda Eastley and Wayne Brandon Ingersoll, 55 Clark Street

Order Appealed: Building Permit – BP 18-857 for premises known as and numbered 65 Clark Street, as confirmed by letter dated December 13, 2018 from Glenn R. Clancy, Director/Inspector of Buildings.

The Parcel Involved Is: 65 Clark Street, Assessors Parcel 31-33, located in the SRC Zoning District, owned by 65 Clark Real Estate LLC, a Massachusetts limited liability company.

Statement: Petitioners, who are abutters, and abutters of abutters within 300 feet of the Parcel, bring this appeal from a Building Permit for construction of a proposed four-car garage containing 1,239.56 square feet of first floor space, with a second floor of equal size for a total of 2,479.12 square feet and a building height of 24 feet. Plans also call for a 40 foot wide cut in the stone wall along Clark Street, to create a driveway leading to the proposed garage.

Petitioners believe that the issuance of the Building Permit “as of right” for the proposed garage was erroneously granted (as was the Building Permit for the building expansion under construction, though not the subject of this Appeal) because it does not take into account that the principal building on the Parcel is a pre-existing nonconforming dwelling by reason of its height of 36.35 feet to the ridge of the roof, which exceeds the 34 foot maximum height in the SRC Zoning District pursuant to §4.2.2(B)(2) of the Zoning By-Law, and the proposed expansion increases the Gross Floor Area (GFA) of the nonconforming structure by more than 30% pursuant to §1.5.4(B)(2) of the Zoning By-Law. Rather, Petitioners believe that, pursuant to §1.5.4(B)(2), where the proposed alteration or structural change increases GFA of the non-conforming structure by more than thirty percent (30%) either as:

- (a) a standalone application in and of itself or
- (b) when combined with the gross floor area added to the structure during the five year period preceding the date of the pending application

then the proposed alteration of structural changes shall require a special permit from the Planning Board.

Pursuant to §4.2.2(B)(3) greater height may be permitted where the building setback from each street and lot line exceeds otherwise applicable requirements by 10 feet plus one foot for each foot of excess height, but in no case shall building height exceed 60 feet or 4 stories in height. However this set-back exception does not apply because the Plot Plan submitted with the Application shows a rear set back of 40.5 feet to the two-story expansion under construction, where 42.35 feet is required. Likewise, the Plot Plan depicts a 25.1 foot front yard setback to the proposed four bay garage, where 32.35 feet are required.

In addition, it appears that an error was made in the Architect's calculation of GFA of the existing principal residence which leads to a greater expansion than otherwise permitted. The Plot Plan includes calculations for the basement (at 63.2% underground, therefore not a story). The Architect's Plans, dated 6/29/18, submitted for this project (sheet A-001) list an Existing Gross Building Area of 8,190 square feet, including (i) 1,790 square feet and 929 square feet of lower level area (which contains the 605 square foot two car garage added within the last five years) as well as (ii) 56 square feet of covered exterior area, none of which should be included in Existing GFA pursuant to the Zoning By-Law's definition of Gross Floor Area (§1.4). Therefore, total GFA of the existing structure (prior to the Plans dated 6/29/18) should be 5,415, not 8,190 as set forth in the submitted Plans.

The combined square footage of (i) the expansion under construction and (ii) the proposed garage is greater than 30% of 5415, where the maximum additional square footage is 1624.5. The square footage of the expansion under construction is 580 (as depicted on sheet A-001 of the Plans) and the proposed garage will add a further 2479.12 square feet (as set forth in the dimensions of the Plot Plan) resulting in a proposed increase of 3059.12 square feet which exceeds the 30% threshold by 1,434.62 square feet.

As a result of these calculations the combined GFA of (i) the expansion under construction and (ii) the proposed garage exceeds 30% of the dwelling's Existing Gross Building Area.

Petitioners believe that the Building Inspector's ruling was thus in error.

Petitioners request an opportunity to submit a more detailed written memorandum prior to hearing, and to offer oral argument.

-- Continued on following page --

Respectfully submitted,



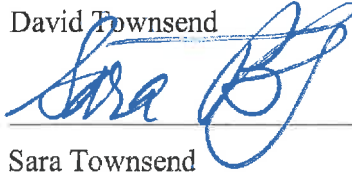
Nancy I. Sommers



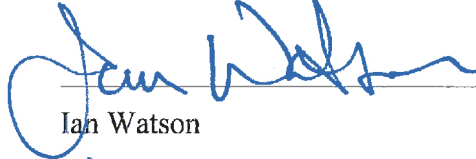
Joshua M. Alper



David Townsend



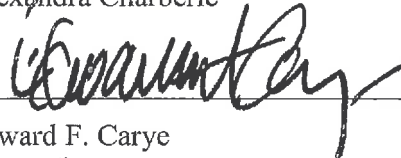
Sara Townsend



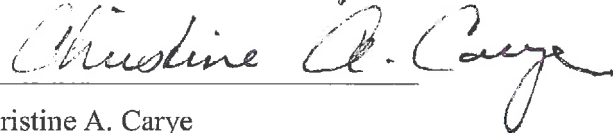
Ian Watson



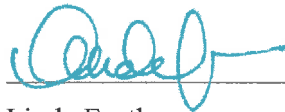
Alexandra Charberie



Edward F. Carye



Christine A. Carye



Linda Eastley



Wayne Brandon Ingersoll

Attachments:

Building Inspector's letter of December 13, 2018
Plot Plan



OFFICE OF COMMUNITY DEVELOPMENT
TOWN OF BELMONT

19 Moore Street
Homer Municipal Building
Belmont, Massachusetts 02478-0900

Telephone: (617) 993-2650 Fax: (617) 993-2651

Building Division
(617) 993-2664
Engineering Division
(617) 993-2665
Planning Division
(617) 993-2666

December 13, 2018

David Townsend
47 Clark Street
Belmont, MA 02478

Re: Building Permit – BP 18-857 65 Clark Street

Dear Mr. Townsend:

I'm writing regarding Building Permit BP 18-857 issued for an addition to be constructed at 65 Clark Street. I understand you have a specific concern about the height of the existing structure at the property and my office's interpretation of Town of Belmont Zoning By-law section 4.2.2 B. 2, which states:

"In the Single Residence C Districts, the height of a Dwelling or other structure shall not exceed 34 feet to the ridge. Notwithstanding the definition of 'Height' in Section 1.4, the height of a Dwelling or other structure with a flat roof shall not exceed 30 feet to the highest point of the roof."

The property at 65 Clark Street is located in the Single Residence C district.

Since 2016 when this section of the bylaw was adopted by Town Meeting, this wording has not been applied to existing structures. I have operated under the belief that the intent is for the wording to apply to new structures.

I appreciate that you may have a different opinion on how to interpret section 4.2.2 B. 2. Please note, if you feel aggrieved by my interpretation you have the right to appeal to the Belmont Zoning Board of Appeals. Your appeal must be made within 30 days of the issuance of the building permit. The applicable permit was issued on November 19, 2018. All appeals are to be filed in the Office of the Town Clerk.

Please do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,

Glenn R. Clancy, P.E.
Director
Inspector of Buildings

Cc: Ara Yogurtian, Assistant Director, Liaison, Zoning Board of Appeals

