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BELMONT, MA

CASE NO. 23-31

2023 OCT 31 AM 10:03

NOTICE OF PUBLIC HEARING BY THE
ZONING BOARD OF APPEALS

ON ADMINISTRATIVE APPEAL OF INSPECTOR OF BUILDINGS DECISION

Notice is hereby given that the Belmont Zoning Board of Appeals will hold a public hearing on Monday, December 4, 2023 at 7:00 PM by a hybrid public hearing at the Art Gallery on the third floor of the Homer Building, 19 Moore Street, and by remote access through the Zoom app. to consider the Administrative Appeal brought by George Hu under Massachusetts General Law c. 40A, § 8. Mr. Hu seeks to appeal the Inspector of Buildings interpretation of the definition of “family” regarding the rental property Mr. Hu owns at 7 Trapelo Road. “Family” is defined in §1.4 of the Belmont Zoning Bylaw.

ZONING BOARD OF APPEALS

George Hu

[Address and contact information redacted for public posting]

Mr. Gabriel Distler
Town of Belmont
Office of Community Development
Belmont, MA 02478

October 17, 2023

Re: 7 Trapelo Rd Rental - Appeal Letter for Zoning By-Law Interpretation

2023 OCT 31 AM 10:03

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BELMONT, MA

Dear Mr. Distler,

I would like to appeal the interpretation by Mr. Ara Yogurtian, Inspector of Buildings, of the Zoning By-Law regarding the rental of 7 Trapelo Road, a property I own.

7 Trapelo Road is the second unit in the two-family house 5-7 Trapelo Road. The unit has 5 bedrooms and 3 bathrooms. My intent is to rent the entire unit to a family of 4 persons, based on the definition of "family" in the town's zoning By-Law, page 1-5. I was in the process of finding the 4th person for the family, but was notified by the town's code enforcement officer, Tom Hodgson, on October 3, 2023, that it was not allowed by the By-Law. Subsequently I was in communications with Mr. Ara Yogurtian regarding the interpretation of the zoning By-Law. I wrote a letter of explanation to Mr. Yogurtian on October 5, 2023, please see attached.

On October 16, 2023, I received an email (see attached) from Mr. Yogurtian with his interpretation of the zoning By-Law, in particular, the definition of "Family". To cite Mr. Yogurtian, "The (3) persons on the lease are not related and would not be considered as family." I believe Mr. Yogurtian's interpretation of what constitutes a family is incorrect. Here is the definition in the By-Law in section 1, page 5:

"Family - One or more persons, including domestic employees, occupying a dwelling unit and living as a single nonprofit housekeeping unit; provided that if five or more persons of the group occupying said dwelling are not kindred to each other, as defined by civil law, they shall not be deemed to constitute a family."

Since I am looking to rent the unit to 4 persons, which is less than 5 persons, they do not have to be kindred to each other to constitute a family. Please note that the definition of "Family" is plain, one or more persons – as long as less than 5 - including domestic employees, occupying a dwelling unit and living as a single nonprofit housekeeping unit", which is the case with my intended rental of 7 Trapelo Road.

Here is my interpretation of the By-Law and what I am entitled to do with my property. Since I intend to rent the entire unit to a family and I do not reside in the unit, the proper classification of use in the By-Law table 3.3 should be "Residential", two-family dwelling, page 3-5:

<u>RESIDENTIAL</u>								
Detached single-family dwelling (See §6D for the GR Districts) <i>Note: §3.3 was amended by Article 14 at the 2014 Annual Town Meeting.</i>	Y	Y	N	SP	SP	SP	N	N
Two-family dwelling (See §6D for the GR Districts) <i>Note: §3.3 was amended by Article 14 at the 2014 Annual Town Meeting.</i>	N	SP	Y	SP	SP	SP	N	N

I understand if I as the owner lived in the unit, and I wanted to rent out some rooms, it would be "Accessory Uses", page 3-6, and I would be limited to rent out a max of 3 rooms, resulting in 4 persons in the unit. However, that is not the case; I am renting out the entire unit to a family of four. The By-Law does allow renting a unit of a two-family dwelling to a family defined by the By-Law, see "Dwelling, Two-Family", in page 1-4, as follows:

" Dwelling, Two-Family – A single residential building designed for occupancy by two families:

Traditional, Two-Family (Horizontal Style) –

- Each unit is completely separated by a common horizontal element (i.e., interior floor/ceiling assembly), and
- At least 75% of one dwelling unit must be directly above or below the other, or

Duplex (Vertical Style) –

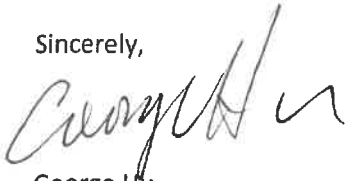
- A structure containing two dwelling units that share a common vertical wall and roof, and
- Each unit has direct access to the outside. "

Currently I have 3 persons who have moved in to the unit. I am looking for the 4th member of the family. The members of the family will all be on the same 12-month lease. Please note that nowhere in the By-Law stipulates how the landlords should go about finding his tenants, or how and when the members of a family should come to being. Furthermore, the By-Law does not prohibit how the rooms are split or how the rents are paid among a family's members. Because of the fact that the members of the family I intend to rent the property to, the 4th person I am looking for in particular, did not come to being at the same time, Mr. Yogurtian claims that I am "renting rooms", and he seems to suggest that it is not allowed. However, there is no basis in the By-Law for Mr. Yogurtian's determination. Firstly, there is no prohibition of "renting by rooms" in the By-Law. Secondly, if I was renting by rooms to 4 individuals – renting the entire unit to a family has always been my intention - I would have 4 individual leases with each one of them. The fact is that I only have one 12-month lease, with the family.

Regarding the "Accessory Uses" Mr. Yogurtian suggested in his email, where if I was living in the unit myself, I would be limited to rent out 3 rooms, that is a mis-classification of use. Because I do not live in the unit, there is no "accessory" to speak of. The property is meant for rental in its entirety.

I look forward to your favorable determination on this appeal. Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "George Hu", with a stylized flourish at the end.

George Hu
Landlord
5-7 Trapelo Road

Encl.

- 1) 7 Trapelo Road Rental Explanation Letter
- 2) Mr. Yogurtian's By-Law interpretation via email