

RECORD ITEM #4

**BERLIN ZONING BOARD OF APPEALS
SPECIAL MEETING MINUTES**

**February 26, 2019
7:00 p.m.**

**Berlin Town Hall
Town Council Chambers**

Members Present

Antonio Francalanga, Chairman
Leonard Tubbs, Co-Vice Chairman
Nelson Graca, Co-Vice Chairman

Corey Whiteside
Ryan Zelek, alternate (seated)
Christine Mazzotta, alternate (not seated)

Members Absent

Sandra Coppola, Secretary
Hunter Mathena, alternate

Staff Present

Marek Kozikowski, Town Planner
Kristen Grabowski, Recording Secretary

I. Call to order

Chairman Francalanga called the meeting to order at 7:00 p.m.

II. Audience of citizens

III. Public Hearings:

ZBA #2019-01-01

1005 Kensington Road, Map 21-1/Block 73/Lot 15

David L. Griffith, Esq., for Liam T. and Cynthia A. Mitchell is appealing the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations §XV.A.1.

David L. Griffith, Esq. was in attendance to present the appeal to the Board. Atty. Griffith began his presentation, affirming his representation for the applicants Liam T. and Cynthia A. Mitchell of 1005 Kensington Road. He noted that the applicants were appealing the Cease and Desist Order issued by ZEO Giusti regarding an unauthorized basement apartment. Atty. Griffith argued the basis of the appeal, noting that based on a combination of Town records and research revolving around the manufacture of cabinets and appliances in the apartment, the use is protected as a nonconforming use. Atty. Griffith noted that Town records may have been limited due to a flood.

Atty. Griffith reviewed the application, noting that in addition, he submitted excerpts from the zoning ordinance. He reviewed the history of the property, explaining that when the house was in 1954, it was under the zoning regulations adopted on August 6, 1948. At the time, the property was first permitted as a farm dwelling in the farm zone. He continued, highlighting the definition of a dwelling as one that could be arranged or designed for up to two families. Atty. Griffith continued the presentation, emphasizing specific periods of time revolving around the development of the property. He noted that after the house was constructed in 1954, there was a change in ordinance in September 1962. He explained that the current regulations went into effect in September 1962.

Atty. Griffith stated their position, explaining that there was an existing use of the apartment from 1954-1962, and that use has continued unabated from then until the present time. He explained that it

according to the regulations, there could be farm dwelling with not more than two families occupying the structure. Atty. Griffith reviewed the building permit issued on October 13, 1954, as well as the Certificate of Occupancy issued on September 29, 1955. He noted that the building permit, by its terms, became void one year later. The CO issued in 1955 was issued in error, which is based on existing Town records. He noted that a new building application was issued on September 21, 1956. The second building permit and application was followed up by a plot plan dated April 26, 1958, which indicates the existing house.

Atty. Griffith discussed the construction of the house, noting that the cast iron/clay plumbing in the home was built into the original slab. That information has been confirmed by the Town of Berlin building official. It was also noted that there is no evidence that the plumbing has changed. He explained that it has been a basement dwelling since the date of the plot plan, the apartment includes a bathroom, shower stall, and kitchen sink all connected to the original plumbing. The cabinets are manufactured with plywood, with a wall oven unit built into the cabinet. Research shows that the oven was manufactured in December 1960.

Atty. Griffith continued his discussion, focusing on the second time period of the property, September 1962 to the present. He noted that the zoning ordinance was amended in 1962, and the apartment use has continued unabated from that time to the present. It was noted that there was a fire at the property, damaging the first and second floors, but the basement was left untouched. He explained that based on research, the cooktop was manufactured in 2004, and it was probably replaced at some point.

Atty. Griffith discussed the tax cards dating back to 1966. He explained that the cards note the existence of a finished basement including a toilet room. The basement was used as a dwelling, which contains a kitchen, bathroom, and finished rooms. He noted that there has never been an abandonment of the use.

Chairman Francalangia noted that many single-family homes have a second kitchen in a basement, including cabinets and an oven. Basements can have cabinets, kitchens, and bathrooms, but that does not mean that it is an apartment.

Mr. Mitchell noted that the property has been taxed with an apartment for 40-something years. He explained that the plumbing was premeditated. Commissioner Tubbs noted that even if the property was plumbed to have a toilet in the basement does not mean that the property was going to be an apartment. Property owners are permitted to have kitchen and bathrooms in basements without it being an apartment.

Chairman Francalangia inquired about separate utilities. Mr. Mitchell noted that utilities did not have to be separate until the 2000s. He noted that when he purchased the property, the building inspector informed him of the need to pull permits. He pulled a permit to separate the electrical meter, which is what spearheaded the investigation.

Chairman Francalangia noted that the evidence does not point to the property being zoned as a two-family property. Mr. Mitchell argued, noting that when the property was built, the zone was a farm zone, which allowed for a two-family home. Chairman Francalangia noted that the property is now in an R-43 zone, which is a single-family zone. Atty. Griffith explained that the property became a legal nonconforming property. Planner Kozikowski inquired about the change in zone, and Atty. Griffith noted that it became an R-43 zone in 1962.

Commissioner Tubbs referred to the 1966 property card, indicating that the property was listed as a single-family house. Planner Kozikowski referred to the applicant's exhibits, pointing out that on Exhibit B, the

basement is referenced as finished, but not an apartment. He continued, noting that Exhibit C references the number of basement rooms as 4+.

Planner Kozikowski clarified the role of the tax assessor, explaining that they do not inspect for zoning compliance.

Chairman Francalangia referenced the 1954 permit, noting that it states the number of housekeeping units as 1. Atty. Griffith explained that the 1954 permit became void. Mr. Mitchell noted that the dwelling could be up to two families. Atty. Griffith inquired about the definition of a housekeeping unit at the time, and Mr. Mitchell noted that many records could have been destroyed in the flood. He explained that the apartment has always been maintained.

Chairman Francalangia referenced a Certificate of Occupancy from 1970, which indicated the property as a single-family.

Mr. Mitchell noted that he bought single-family house with an apartment. Chairman Francalangia noted that in this situation, the buyer must beware. The property cards and Certificate of Occupancy say that the property is a single-family.

Mr. Mitchell noted that he went by the records with the Town Clerk. Commissioner Tubbs reiterated that a finished basement does equate to an apartment.

Commissioner Mazzotta inquired about the square footage requirements for basement apartments. Planner Kozikowski discussed the special permit process, noting that the maximum square footage allowed is 700 sq. ft. maximum for an accessory dwelling unit, as well as a percentage of the house. Mr. Mitchell noted that the basement apartment is 1200 sq. ft, and the upstairs is 1600 sq. ft. Commissioner Tubbs noted that the basement is 1530 sq. ft.

Mr. Mitchell referred to the Town Clerk's records from 1976. Commissioner Graca reviewed the cards from 1966, 1976, 1986, and 1996, noting that they all list the property as single-family. Mr. Mitchell noted that the property was zoned as a farm use in 1962. Chairman Francalangia explained that it was zoned as a farm zone in 1948, but it changed in 1962. He noted that from 1960-2019, records indicated that the property was as single-family use. He noted that there are no records to show that there were any two-family units.

Commissioner Tubbs noted that the paperwork indicates a finished basement. Commissioner Whiteside noted that the applicant has not proved the use. Commissioner Graca noted that the Board is being charged to determine whether the zoning officer acted appropriately and was justified in issuing a Cease and Desist Order for the apartment. Commissioner Whiteside agreed, asking if there was enough evidence presented to overturn the ZEO action. Commissioner Mazzotta noted that it is up to the applicant to remedy the violation.

Atty. Griffith noted that the Planning and Zoning Commission will not accept the property as a mother-in-law apartment. Mr. Mitchell indicated that he was told that he would have to rip it all out. Chairman Francalangia noted that he would not have to rip it out, but he could not have tenants living there.

Commissioner Tubbs moved to close the public hearing, seconded by Commissioner Graca. The motion carried unanimously.

IV. Regular Meeting:

ZBA #2019-01-01

1005 Kensington Road, Map 21-1/Block 73/Lot 15

David L. Griffith, Esq., for Liam T. and Cynthia A. Mitchell is appealing the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations §XV.A.1.

Commissioner Graca moved to uphold the decision of the Zoning Enforcement Officer. The motion was seconded by Commissioner Tubbs, and it carried unanimously. Thereby the appeal was denied.

V. Board Business:

Discussion: DRAFT proposed Zoning Regulations Amendments pertaining to automotive uses.
CFPZA Annual Conference - tabled

March 28, 2019 Election of Officers

Commissioner Tubbs nominated Tony Francalangia for Chairman of the Board. The motion was seconded by Commissioner Zelek, and it carried unanimously.

Chairman Francalangia nominated Commissioner Graca and Tubbs for Co-Vice-Chairs of the Board. The motion was seconded by Commissioner Whiteside, and it carried unanimously.

Commissioner Tubbs nominated Commissioner Coppola for Secretary of the Board. The motion was seconded by Commissioner Graca, and it carried unanimously.

Adoption of 2019 Meeting Dates Calendar

Commissioner Graca moved to adopt the 2019 meeting calendar. The motion was seconded by Commissioner Zelek, and it carried unanimously.

VI. Approval of Minutes

September 25, 2018

Commissioner Graca moved to approve the minutes of September 25, 2018, seconded by Commissioner Whiteside. The motion passed with a vote of 4-0-1. Commissioner Zelek abstained.

October 23, 2018

Commissioner Tubbs moved to approve the minutes of October 23, 2018, seconded by Commissioner Mazzotta. The vote passed with a vote of 3-0-3. Commissioners Francalangia, Graca, and Whiteside abstained. Commissioners Tubbs, Mazzotta, and Zelek voted in favor.

VII. Adjournment

Commissioner Tubbs moved to adjourn the meeting, seconded by Commissioner Zelek. The motion carried unanimously. The time was 8:10 p.m.

Respectfully submitted,

Kristen M. Grabowski
Recording Secretary

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2019 MAR -4 PM 3: 54

Kathy Wallace
BERLIN, CT.

RECORD ITEM #5

Town of Berlin: Zoning Board of Appeals

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TRANSCRIPT

(Track 5a - 1:55)

Chairman Tony Francalangia: Okay, first application, our only application tonight, is uh ZBA 2019-01-01. 105, 1005 Kensington Road, Map 21-1, Block 73, Lot 15. David L. Griffith, Esquire, for Liam T. and Cynthia A. Mitchell is appealing the decision of the zoning enforcement officer to issue a Cease and Desist Order for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations XV.A.1. Speaking for the application?

David L. Griffith: Yes, uh.

Planner Marek Kozikowski: Could you approach the uh, microphone?

Griffith: Yes.

Francalangia: If you could just sign in.

Commissioner Nelson Graca: You have to sign in.

Griffith: Oh (inaudible).

Francalangia: Sign in, and the microphone is yours.

Kozikowski: I'll fill out the top.

Francalangia: David, David Griffith.

Griffith: Correct.

Francalangia: Okay.

(inaudible)

Griffith: Thank you.

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TOWN CLERK BERLIN, CT

DATE ISSUED 5/30/2019

INVALID WITHOUT SEAL

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1 Francalangia: The floor is yours.

2 Griffith: Yes, um. As a, uh, furthering matter, um I do
3 have a uh, a packet of submissions to the um, to the Commission,
4 to the uh, Board tonight. So, I would like to disperse those to
5 the, to the Board members. May I do that?

6 Commissioner Christine Mazzotta: Do you want me to just
7 hand them out?

8 Kozikowski: Do you have a separate copy for the file?

9 Graca: I'll do one of those for the file.

10 Griffith: I do have, uh, five for submission.

11 (inaudible side conversation)

12 Francalangia: We do have, uh, five members here tonight. I
13 apologize for not introducing them. Uh, Ryan Zelek, Leonard
14 Tubbs, myself, Tony Francalangia, Nelson Graca, and uh, Corey
15 Whiteside. And our alternate is uh, Christine Mazzotta. Um,
16 Marek Kozikowski, Director of Development Services. Kristen
17 Grabowski, recording secretary.

18 Graca: Marek, did you get a copy?

19 Kozikowski: No, I need one of those before, okay.

20 Francalangia: Okay.

21 Kozikowski: Do you have the stamp?

22 Graca: Um, no.

23 (inaudible)

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1 Griffith: My name is uh, David Griffith, and uh, I am the
2 attorney in private practice in Newington, Connecticut, and I am
3 representing Liam and Cynthia Mitchell, who reside at 1005
4 Kensington Road in Berlin. And, Mr. and Mrs. Mitchell have
5 appealed the uh, zoning enforcement officer's order um,
6 basically, uh it was a cease and desist order, uh as an
7 unauthorized basement apartment. Um, the appeal has been filed
8 because the, the Mitchells claim that the use of the basement
9 apartment is a protected right as a nonconforming use. And the
10 basis for the claim, uh, of this appeal is derived from a
11 combination of Town records, um, which it is my understanding,
12 may be limited because of um, some Town flooding in the past.
13 But we understand the records are the records. Uh, also research
14 as to the manufacture of the basement cabinets and appliances
15 and testimony that we would like uh, to present based on the,
16 um, Liam Mitchell's research experience in these matters. We do
17 appreciate the Board giving us the opportunity to review the
18 submission from the zoning enforcement officer and having this
19 matter continued to tonight. Uh, in support of the appeal,
20 besides what has already been submitted, uh with the
21 application, for your consideration, we have also submitted the
22 zoning ordinance that, with excerpts from the zoning ordinance,
23 which really set forth the beginning for uh, what we claim, uh,

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1 was the uh, the use in the basement. And, that zoning ordinance,
2 uh, which is the first item in your packet, was adopted back in
3 Aug-, on August 6, 1948, and in that ordinance, um, the Town of
4 Berlin first uh, permitted um, a farm dwelling in something
5 called a farm zone. And, that is, that is the area of Town where
6 my clients' house is located. And you'll also see highlighted in
7 that was the definition of a dwelling. Um, and dwelling was a
8 um, it was an, and I, and I, I refer to it in my summary, but
9 it's basically a dwelling that could be arranged or designed for
10 up to two families. In my um, in my um overview, I have set
11 forth for the, for the Board, the periods that from our point of
12 view, are the most important periods of time for the, for you as
13 a Board to look at. One is the time period from when this build-
14 , when this house was originally constructed, which was in 1954,
15 up until the change in the ordinance uh, in September of 1962.
16 And then the second period of time, which is of importance, is
17 from September of 1962 until the present. And, it is our
18 position that, and with the evidence that we're presenting
19 tonight, that there was first of all, an existing use of the
20 apartment in the basement uh, from 1954 up until September of
21 1962, and that that has continued um, unabated until the present
22 time. I'd like to refer you to the uh, the overview that I'm
23 going to be talking about that. Uh, and I know that there will

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1 be time for questions later on. Uh, but um, the first period of
2 time that we're talking about is that um, time when the existing
3 use of the basement as an apartment was, if you will, created.
4 And, um, you will see the reference known specifically, um, that
5 in the farm zone there could be a farm dwelling, and a dwelling
6 would be a building arranged or designed to occupy not more than
7 two families. And you have in your packet that was submitted by
8 the zoning enforcement officer, you will find a building permit
9 that was issued October 13, 1954, and a certificate of occupancy
10 that was issued on September 29, 1955. Those have been referred
11 to a dwelling, but there were, um based on the records, a couple
12 of circumstances that you need to know. And that was that the
13 building permit that was issued on, on October 13, 1954 by its
14 term became void a year later. And the second part is that the
15 certificate of occupancy that was issued on September 29, 1955
16 was issued in error. And that's based on the Town records that
17 exist. A new application for a building permit was dated
18 September 21, 1956, with a written note, notation that the
19 application takes the situation as it exists. And you will see
20 evidence that is going to be presented tonight, which has
21 already been acknowledged by the Building Official, today's
22 Building Official in, in the Town of Berlin, Berlin, is that the
23 plumbing, that is uh, in this home was building into the

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1 original slab. And, that plumbing, we would submit, um, from the
2 original slab, is, is not disputed, that that is the original
3 plumbing. There isn't any evidence that that has changed. What
4 you're also going to find is that uh, besides this second
5 building permit, um, or I'm sorry, second application with
6 notations it says, here's the situation that ex-, as it exists,
7 was followed up, and again you will find it in the packet from
8 the zoning enforcement officer, you will find a, a plot plan
9 dated April 26, 1958. And on that plot plan, it indicates an
10 existing house, and that existing house would, of course have
11 that original slab containing the plumbing. The photos that uh,
12 Mr. Mitchell will talk about uh, will, uh, the evidence for you,
13 the original plumbing configuration um, and which have served as
14 a, which show, which served as a basement dwelling since on or
15 about April 26, 1958. And Mr. Mitchell will also testify that
16 um, there in the basement, there being a bathroom, shower stall,
17 toilet, and kitchen sink, um, which are connected to the
18 original plumbing, as well as the type of kitchen cabinets that
19 are found uh, in the basement, which are vintage 1950s and are
20 the type of cabinet that you would find back at that time, which
21 is so-called um, plywood unitized versus a modular type cabinet,
22 uh cabinet. Um, Mr. Mitchell also, and we have submitted in the
23 packet, um, some research that he has done to show that the uh,

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1 the wall oven was built into the basement cabinets likely, the
2 original one was man-, manufactured in December of 1960. And
3 again you'll, you'll uh, you'll see in that packet photos of
4 that wall. And, finally, in regards to that first existing
5 phase, we will refer you to the recent uh, inspection by uh, Mr.
6 Van Winter, who is your, one of your present building officials,
7 who examined the plumbing in the basement, and he found that
8 they were, they were of cast iron or clay type plumbing, which
9 is under the slab, and he concluded that the slab and plumbing
10 are original, and that it served devices and plumbing in the
11 basement. Now the second time period, which is important to this
12 case, on this app-, in this appeal, is from September of 1962
13 when the zoning ordinance was invented. Um, and the um, already
14 existing use of the basement as an apartment has continued since
15 that time unabated until the present, where you will know,
16 you'll hear testimony from Mr. Mitchell that after his inquiry
17 with the Berlin Fire Marshal that a couple of rooms on the first
18 floor were damaged by fire, um, and that uh the demolition of
19 the building left the basement unaltered, as shown on the, the
20 rebuilt plans, which will be explained by Mr. Mitchell. And,
21 because of that, when they rebuilt that the um, the house, um
22 everything remained the same in the back-, in the basement, the
23 bathroom and the kitchen cabinets would have remained intact.

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1 And the recent photos show the same configuration with the 1960
2 wall oven and based on the, um, his research, there was a 2004
3 cooktop, but the way the cabinets were reconfigured, or, or
4 configured, it was probably replaced at some point. You also
5 will find a submission of the tax assessors cards um, that go
6 back to 1966, and those uh, cards note the existence of a
7 finished basement, um including uh, a toilet room and again,
8 there are notations that show a configuration coming forward for
9 many years, um that the basement was used as a dwelling
10 containing a kitchen, bathroom, and finished rooms. There is
11 reference uh, to a uh, demolition uh, a permit, which uh, Mr.
12 Mitchell will address, but um, it is our position that, uh that
13 there apparently was a fire. The fire effected the first and
14 second floors. The rebuild plans show that the uh, basement
15 remained the same, um, and that there wasn't any abandonment of
16 this use. I would like to uh, have uh, Mr. Mitchell um, give
17 testimony. My only concern is that um, I did want to present him
18 with questions and have him respond to it. And, I'm not sure how
19 we do that with this, with this setup. I can stand here with
20 him, I guess. Is that what you would prefer me to do? That's
21 fine. So -

22 (inaudible)

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1 Francalangia: I'm not understanding that, you know, when
2 you presented all of this. I mean, I let you go ahead and
3 present it, but what does having a separate kitchen and separate
4 bathroom and shower and everything else downstairs have anything
5 to do with a second dwelling? I don't understand it, because
6 half the houses in Berlin have, um, you know, you know, basement
7 uh, kitchens and showers.

8 Commissioner Leonard Tubbs: The cabinets, the cabinets
9 could have been put down there from a previous remodel.

10 Francalangia: I don't, I don't understand --

11 Tubbs: Mine are down there.

12 Francalangia: I don't understand what (inaudible) --

13 Mazzotta: Tell (inaudible) what to do basement.

14 Francalangia: You know, you said that, that there was
15 evidence here with a shower and drain and everything else. That
16 doesn't really mean a lot to me because I have a kitchen
17 downstairs in my cellar, and I'm, I'm in a one-family house.

18 Tubbs: My plumbing --

19 Francalangia: My previous house, I had a shower and a
20 kitchen downstairs as well. And I had kitchen cabinets. I don't,
21 I don't --

22 Liam T. Mitchell: How was your house --

23 Francalangia: (inaudible)

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1 Mitchell: How was your house listed with the uh, with the
2 Town?

3 Francalangia: It was listed as a --

4 Mitchell: Was it listed --

5 Francalangia: It was listed as an R-19 or R-23 zone and a
6 single-family zone.

7 Mitchell: Single-family zone. Did it have an apartment?

8 Francalangia: No.

9 Mitchell: Well, this does. And it's been taxed as that for
10 forty-some odd years. Plus, previous to that, it was not looked,
11 looked on. So, that's the difference. This house has a record.
12 To this day, it's being taxed as a two-family.

13 Francalangia: Well, I think you should have started the
14 presentation that way, rather than you know, go through all of
15 this stuff over here because it really didn't make a lot of
16 sense to me.

17 Mitchell: Well --

18 Francalangia: You know --

19 Mitchell: I'll answer any questions you got.

20 Francalangia: I mean, you know, I'm just being pragmatic.
21 It's like, okay, there's plumbing downstairs. There's kitchen
22 cabinets downstairs, there's a cooktop downstairs. Well, what's
23 that got to do with you know, with, with the issue at hand?

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1 Mitchell: Well, the planning of this house, in order to
2 have the plumbing with this setup, had to have planning in the
3 beginning to show that the plumbing itself was pre-meditated. It
4 was 1954. They made this house a two-family.

5 Francalangia: It has --

6 Mitchell: Because --

7 Francalangia: a separate electrical meter? A separate gas -

8 --

9 Mitchell: Back in those days --

10 Francalangia: gas line?

11 Mitchell: those days --

12 Francalangia: Separate water line?

13 Mitchell: it was only the 2000s that they required it to be
14 separate. We have a septic system.

15 Tubbs: My house was built in 1954. My, I don't have a bath-
16 , I don't have a, um, toilet in the basement. But, it is plumbed
17 to have a toilet if I want one. It's been there since 1954,
18 under the slab when they built it.

19 Mitchell: Well, it's depending on that, what the use was as
20 you were going forward. If you didn't use it --

21 Tubbs: But --

22 Mitchell: In this case, they used it.

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1 Tubbs: Our point it, you could have a bathroom down in your
2 basement.

3 Mitchell: This has a kitchen.

4 Tubbs: Okay. You could have a kitchen.

5 Mitchell: (inaudible)

6 Francalangia: But, if you don't have, I mean, if you don't
7 have a separate electrical system, or separate meters for
8 electric and septic, you know, utilities.

9 Mitchell: Well, that's, that's a point of issue. I'm a
10 contractor here in Town. I've been in this town for thirty plus
11 years. And, when I bought the house, I was approached by the
12 building inspector who says, you've got to pull permits on your
13 house. Well, that just opened a whole can of worms because
14 apparently the people before did not pull any permits. And, I
15 have a good relationship with the building department, and the
16 other departments for the most part. The, the point here is, is
17 when I went to pull those permits, I pulled a permit to separate
18 the electricity. As a matter of fact, I have picture of it.
19 Because I knew that as a two-family, you had to have the power
20 separated. Okay, I have a septic system. And the way I work on
21 the rest of my rentals, is, for as far as gas, I have a high-
22 efficiency gas unit, an on-demand. And, what works extremely
23 well with renters is, you just divide the bill by how many

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1 people are in the house to how many, and the bill is more than
2 reasonable. And, I've never had an argument about that. So,
3 that's the way I was going to make sure that the utilities were
4 all separate. I even have a picture of, of the uh panel. And, I
5 was told to stop. I, I pulled the right permits, I pulled, as a
6 matter of fact, uh I was told that because I had pulled the
7 permit, they had stamped on it first uh, uh single-family
8 dwelling, on a permit that I had fully intended should have been
9 a two-family. That's the reason why there, I guess, things came
10 to a head.

11 Francalangia: I think, a lot of the uh, paperwork here,
12 there's about an inch of paperwork here, and, nowhere does it
13 show that this was ever zoned as a two-family.

14 Mitchell: It does. That piece of paper you have in front of
15 you says that. That zoning regulation right in front of you said
16 in that they 1948 allowed one and two-family homes uh, were
17 considered normal in that farm zone.

18 Francalangia: Yeah, but this is an R-43 zone now, not a
19 farm zone.

20 Mitchell: Yeah, but that was in '62.

21 Griffith: And, and that's the point. As a nonconforming
22 use, if that was an existing use before the change to the R-43,

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1 | which is what we're claiming, and it continued on to the present
2 | time, then it's, it's protected as a nonconforming use.

3 | Kozikowski: What, I'm sorry, may I? What date, what date
4 | did the zone change from farm zone to R-43?

5 | Griffith: September, 1962.

6 | Kozikowski: '62.

7 | Griffith: September of 1962, according to the, according to
8 | the, um, according to the, the zoning ordinances that I
9 | researched. I know, I, I know that the, the zoning enforcement
10 | officer said in, in her notes, she said something about it shown
11 | on the map in 1965.

12 | Kozikowski: Mhmm.

13 | Griffith: But I looked at the, at the ordinance, uh, in
14 | September of 1962.

15 | Tubbs: In 1966, I'm looking at the property card here, and
16 | it says that the toilet in the basement was roughed in. It was a
17 | single-family house, 1966.

18 | Francalancia: (inaudible) basement (inaudible).

19 | Griffith: (inaudible) card.

20 | Kozikowski: Your exhibit B that you submitted, um, with the
21 | initial appeal, um, has a tax card from 1966, and when it says
22 | rooms, it says basement: one.

23 | Tubbs: Okay, so it's finished.

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1 Mitchell: (inaudible) we said, it's finished.

2 Tubbs: But a finished basement isn't an apartment.

3 Kozikowski: It wasn't until your exhibit C, yeah exhibit C
4 from 19--

5 Francalangia: (inaudible)

6 Kozikowski: I'm not sure what the date of that, but it
7 says, basement rooms: four, plus bedrooms. So somewhere between
8 these two tax cards, there was work done in the basement. And,
9 just uh, just uh, for a point of clarification that um, to
10 response to what Mr. Mitchell's comment. Um, a tax assessor does
11 not inspect properties for the purposes of zoning compliance.
12 They inspect for the purpose of taxing, and taxing the
13 improvements that they see.

14 Francalangia: 1954 building permit is uh, it says number of
15 housekeeping units: one. And, that's 1954 building permit.

16 Kozikowski: Mhmm.

17 Francalangia: And that's uh, uh, the (inaudible) in 1962.

18 Kozikowski: Okay.

19 Francalangia: It says number of housekeeping units: one.

20 Griffith: And that's the one, it, it, it does talk about
21 uh, dwelling, and that's the building permit also that expired.
22 Became not expired, it became void.

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TRANSCRIPT

1 Francalangia: Right, but it was listed as a, as one house,
2 as a single family --

3 Mitchell: dwelling --

4 Francalangia: in 1954.

5 Mitchell: Was it a single dwelling?

6 Francalangia: A single dwelling. It said number of
7 housekeeping --

8 Griffith: Well --

9 Francalangia: units, one housekeeping unit.

10 Mitchell: Okay, and the definition in that time was a one
11 or two-family house in a farm zone. That was the point.

12 Francalangia: Well --

13 Kozikowski: Was the definition --

14 Tubbs: That was the definition of what is allowed in 1948,
15 not necessarily what was built.

16 Kozikowski: Yeah, I mean, what, what was the definition of
17 a housekeeping unit at that time?

18 Mitchell: I don't know, I wasn't born then.

19 Kozikowski: I mean, I can run down and get the book.

20 Tubbs: Even on this '15 card, it says rec room: finished.

21 Mitchell: I do not know what records are void because of
22 the flood. So, there could be other records, but these are the
23 only ones that are available. But it has been maintained.

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TRANSCRIPT

1 Griffith: And that building permit was void a year later,
2 and the C.O. was issued. They are per the Town records.

3 Francalangia: Well, that was properly filled out, I guess,
4 you know.

5 Griffith: Well, it may have been properly filled out, but
6 it was, it was void.

7 Francalangia: The application for installation and
8 alteration for a pair of private (inaudible) systems at 1005
9 Kensington Road. Description: families, one; rooms, seven;
10 bedrooms, three. Everything says one-family in this thing, for,
11 for, for you know, the last three, four, five decades.

12 Griffith: Well, actually if you take a look at the uh, at
13 the, the application for the, uh for a, for the permit, um, it
14 came after the one that was voided out --

15 Tubbs: Oh my God, this is --

16 Francalangia: Here, another one, a certificate of
17 occupancy, use and compliance, (inaudible) floor occupancy as a
18 single-family dwelling.

19 Griffith: Which, which one is that one?

20 Francalangia: 1970. Approved as a single-, I, I mean, I've
21 got 50 pieces of paper, literally, that say this is a single-
22 family home.

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TRANSCRIPT

1 Griffith: But if it was used as a two-family, then it's a
2 protected right notwithstanding.

3 Francalangia: But it wasn't. It, it was never listed as a
4 two-family, for the last forty years, or fifty years. Since
5 1970, at least, I mean, even before that. It's been over fifty
6 years that, it hasn't been listed as a two-family. You know, I,
7 it wasn't sold as a two-family. Okay. He didn't buy it as a two-
8 family --

9 Mitchell: I bought it --

10 Francalangia: He bought it as a --

11 Mitchell: as a single-family with an apartment. That's what
12 I bought it at.

13 Francalangia: Buyer, buyer beware. Okay. Because I have, I
14 have --

15 Tubbs: This isn't the first one --

16 Francalangia: I have a, uh, uh, seen other situations where
17 people have bought property and they've had you know, people
18 before them did not take permits, and they got stuck. They got
19 stuck for, to the tune of 30, 40, 50 thousand dollars.

20 Mitchell: I'm there.

21 Francalangia: I know, but I'm just saying that, you know,
22 what I'm saying is that I don't have a whole hell of a lot to go
23 by here with the town. The town, everything this says is, it's

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TRANSCRIPT

1 all single-family. You know? And, because you bought it as a,
2 uh, as a, you know, with an apartment doesn't mean that it was
3 an apartment.

4 Mitchell: I went by the Clerk's records.

5 Francalangia: We had one on Kensington Road, here --

6 Kozikowski: Mhmm.

7 Francalangia: just a little, about a year or two ago.

8 Somebody bought it with the third floor, that they thought it
9 was a three-family --

10 Tubbs: New Britain Road --

11 Francalangia: New Britain Road --

12 Mitchell: Between (inaudible) Norton and --

13 Francalangia: Yeah, and --

14 Mitchell: Norton and --

15 Francalangia: And, you know, we couldn't do anything for
16 them. We couldn't help them.

17 Mitchell: I thought that was zoned a three-family.

18 Francalangia: It was, it was a two-family. And, they
19 couldn't put a three family. And, they had, they had to close up
20 the third floor. And, that was like, less than a year ago.

21 Mitchell: No, I think --

22 Francalangia: That's why I'm saying that. We tried to help
23 that person out, to try to get a three-family in there. And, we

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TRANSCRIPT

1 just couldn't do it. Legally, we would have been, you know,
2 somebody would've shot us, you know --

3 Tubbs: It was longer than that, but --

4 Francalangia: It was a year ago, or a year and a half ago?

5 Tubbs: It was a couple of years go.

6 Mitchell: Our debt was --

7 Tubbs: I've been here fifteen years, Tony. So --

8 Francalangia: I don't remember. It's just everything goes
9 by, you know --

10 Mitchell: I know the family.

11 Tubbs: Who would've thought that, but --

12 Francalangia: But, um. You know --

13 Mitchell: There is a terrible disconnect, and I know that,
14 who used to own the house was uh, Cobuzzi, and God knows he
15 never pulled any permits or, or, in -

16 Tubbs: (inaudible)

17 Mitchell: anyone that knows the Cobuzzis, I know, you know,
18 I love the kid. He was a uh, renter of mine. But, at the same
19 time, uh the Regans, they didn't do anything to it. But all this
20 was done in the uh, Cyr era. And the um, I believe it was
21 Cobuzzi that owned it for 20 years. So, records in those days
22 weren't as stringent as they are right now. And, nobody gave two
23 hoots that it was a single-family or a uh, uh a single-family

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TRANSCRIPT

1 with an apartment on it. We're going on 40 plus years the Town
2 knew that that had an apartment, right, wrong, or indifferent.

3 Tubbs: Where, where, where does it, I'm still trying --

4 Mitchell: The town, Town records.

5 Tubbs: Where? What --

6 Mitchell: It shows --

7 Tubbs: records?

8 Mitchell: It shows that there was an apartment downstairs.

9 Tubbs: It shows that there was a finished basement. Every
10 record I've looked at so far says finished basement. I have a
11 finished basement. It is not an apartment.

12 Mitchell: With --

13 Tubbs: I'm sure many of us have finished basements that
14 aren't apartments. I don't see anywhere on any of the cards that
15 says it was an apartment. And, it says three rooms. I've got
16 four rooms in my basement.

17 Griffith: Well there are, there are definitely notations in
18 the cards more recently that there is an apartment. I don't know
19 if (inaudible) -

20 (inaudible side conversation)

21 Kozikowski: In the zoning violation --

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TRANSCRIPT

1 Mazzotta: Is there, is there a rule on what percentage of
2 square footage can be considered an in-law apartment without
3 violating things?

4 Kozikowski: There are, well it's, there's, there is a
5 process to get a uh, accessory dwelling unit, and that is
6 through the special permit process with the Planning and Zoning
7 Commission. There is a maximum square footage of, I believe, 700
8 square feet, um, that could be used --

9 Mazzotta: Depending on how big the house is --

10 Kozikowski: No matter how big the --

11 Mazzotta: (inaudible)

12 Kozikowski: Well, it's 700 max, and there's, it's also a
13 percentage of the, of the house could be, can be no more than x
14 amount of, out of the house can be an apartment all vetted
15 through the special permit process.

16 Whiteside: It's 1200 square feet in the basement.

17 Mazzotta: How much is it (inaudible)

18 Graca: Over a thousand --

19 Tubbs: 1500 something --

20 Francalangia: I remember the 700 (inaudible) just a, you
21 know --

22 Kozikowski: Yeah.

23

February 26, 2019

TRANSCRIPT

1 Griffith: Even if you (inaudible) --

2 Tubbs: (inaudible) area is 1536 square feet.

3 Griffith: (inaudible) --

4 Mitchell: (inaudible) two cards back it's, since 1976, 1976
5 is when this, the clerk noted a apartment in the, or a finished
6 basement. That's when they started calling it a two-family.

7 Graca: But in '76 it, it's stating here, I'm looking at
8 (inaudible) it was listed as a one-family occupancy.

9 Francalangia: One unit, living units one.

10 Graca: In '86, one living unit. '96, same thing basically,
11 '66 single farm, single-family occupancy.

12 Francalangia: That, it's, it's --

13 Mitchell: Well, it's, in that time in '62, it was farm
14 zoned. That's when it changed to an R-43.

15 Francalangia: Well, if, if it was a farm zone back in '60,
16 1948, and it was not used as a, as a two-family, or it wasn't an
17 apartment rental, okay, then um, I guess, you know, when they
18 changed it to an R-43 zone, they changed it to single-family
19 unit. You know, they could have put these downstairs kitchens
20 in, plumbing in, you know. The plumbing could have been there --

21 Mitchell: The plumbing was definitely there.

22 Francalangia: (inaudible) most likely put the kitchen back
23 in the '70s. But this thing from 1960 up to 2019 shows one-

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TRANSCRIPT

1 family. How am I going to be able to say after 58 years that
2 this is a two-family house? How? You tell me.

3 Griffith: Because there was an existing use from the
4 original plumbing. There is, there is a, a (inaudible) --

5 Francalangia: Plumbing has nothing to do with it. That's
6 what I'm saying. The plumbing has got zero to do with it. I have
7 to go, I have to go by the legal records that are here. And,
8 and, you know, what I'm saying is that I can't find anything
9 that tells me that this had two families in it ever. Even when
10 it was in 1948, it didn't have two families in it.

11 Griffith: Well, the, the legal records are some indication,
12 but it's the actual use of the property during that time period,
13 notwithstanding the, the records. For instance, there is a,
14 there is a wall oven that's in that, in that uh, in the basement
15 that was manufactured in 1960.

16 Tubbs: What is, how is that possible --

17 Francalangia: How is that --

18 Tubbs: how is that relevant? --

19 Griffith: (inaudible) --

20 Tubbs: If I remodeled my kitchen, and I, I had a working
21 wall oven in my upstairs kitchen, and my wife happened to want a
22 second oven, guess where that wall oven would go? Down in the
23 basement, in another room so she could have it. We had a house

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TRANSCRIPT

1 that we were going to buy at one time that had three ovens in
2 the basement. It had a full kitchen, but it wasn't uh, uh, a
3 dwell, a dwelling. It was part of the single-family unit. Like
4 Tony says, we have paperwork here, but nothing here tells us
5 that that was ever an apartment. It says it was a finished
6 basement. We have to go by what we have here and what the zoning
7 regulations say. That's all we have to go by. We have no other
8 alternative.

9 Francalangia: And, and to make matters worse, we, we have
10 to vote, and when we vote on this thing it's whether or not the
11 zoning enforcement officer acted properly. And, with all the
12 information that we have here, I mean, chances are the Zoning
13 Enforcement, I'm, I'm not going not pre-determine the vote here
14 or anything, but chances are, I, I don't find any evidence that
15 I can say, well, you know, here's the piece of paper that says
16 this was a two people, two families lived in here. I mean, it's
17 58 years of paperwork here, and there's, there's nothing there.
18 Other than the fact that you've got evidence that there was a
19 kitchen downstairs, there was a refrigerator downstairs. There's
20 plumbing downstairs. Every house in Berlin has that. You know, I
21 mean, kids, when I was little on Hummingbird Drive, my kids were
22 living downstairs. You know, I mean, you know, they would come
23 back and stay downstairs and watch TV, and uh, use the kitchen,

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TRANSCRIPT

1 and I made a downstairs kitchen just for the purposes of having
2 uh, you know, birthday parties and whatnot, and everything else.
3 But basically, you know, we had two kitchens in our house, and
4 we never used it as a multi-family dwelling. You know what I
5 mean? I, it's, it's, it's not something that was ever, you know,
6 with uh, the intention of having two families and having a
7 rental property or anything like that.

8 Mitchell: So, shy of getting somebody here to say that they
9 lived in that house as a second family, you're saying that it,
10 it's just blown off as it could've been a summer kitchen or
11 whatever uh, with the full bathroom, and

12 Francalangia: The fact that --

13 Mitchell: with the laundry --

14 Francalangia: Yeah, the fact that you have all the
15 amenities, uh, you know, shower, kitchen, all, you know uh,
16 bedroom, whatever, you know --

17 Mitchell: (in audible) --

18 Francalangia: the amenities, you know, the fact that you
19 have all the amenities there, doesn't preclude the fact that we
20 don't have any piece of paper that says there's two families or
21 this used to be a two-family house. You know, we don't have
22 anything, for 58 years worth of --

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TRANSCRIPT

1 Griffith: There doesn't need to be a piece of paper, that
2 it goes to the use. I understand what you're saying about the
3 records.

4 Tubbs: So, you're --

5 Francalangia: (inaudible) the use. I, uh, really, every
6 house in Berlin has a kitchen that's 30 years old down in the
7 basement. Not every house, but almost half the houses. You know,
8 I mean, it's, it's just that it's, it's almost like people have
9 their laundry room downstairs, okay. They move their laundry
10 room downstairs and then they decide, well, I'm going to put a
11 shower downstairs because we're working on the garden, and we're
12 going to get dirty, I'm going to wash downstairs. And then, you
13 know, you know, since I'm washing downstairs, I might as well
14 eat downstairs. You know, especially if they have a walk-out
15 basement. Every walk out basement in Town probably has another
16 kitchen downstairs because it's more convenient for people
17 because they have a walk-out. Okay, but that doesn't, that's not
18 enough evidence to say that this was a two-family, I guess is
19 what I was saying. And the fact that you have a whole, complete
20 duplication of what's on the first floor, on the, on the
21 basement floor doesn't even make it a two-family.

22 Graca: We're here, we're here to decide whether Maureen
23 did the right thing.

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TRANSCRIPT

1 Francalangia: Well, I know --

2 Graca: You know, that's --

3 Francalangia: that's the other issue.

4 Graca: what this meeting is for.

5 Francalangia: That's basically what it is. Yeah, and I had
6 kind of said that. I just, it was, uh.

7 Whiteside: Is there enough evidence to overturn the ZEO
8 action?

9 Mazzotta: Or, is there a way to remedy it?

10 Francalangia: I don't see it (inaudible).

11 Graca: Well, I don't think it's really on us to remedy it.
12 That's not what we're really here for.

13 Tubbs: It's up to, it would be up to him to go to the
14 zoning (inaudible).

15 Graca: The meeting today is whether she issued this
16 correctly or not.

17 Mitchell: Planning and zoning does not accept any of the
18 uh, as a mother-in-law apartment. They will not accept it. They
19 said rip it out. That's the quote I got. Rip it all out. Now,
20 that's what got my hair up, okay? So, because it's 1200 square
21 feet, okay, I'm going to rip the whole thing out? Because zoning
22 says it's been there from day one, okay? You're telling me that

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TRANSCRIPT

1 half the houses in Town got it, so why am I going to rip mine
2 out?

3 Mazotta: You can leave it (inaudible) --

4 Tubbs: Because they don't have a second family living in
5 there.

6 Mitchell: I don't have a second family living in there.

7 Mazzotta: (inaudible) --

8 Tubbs: You don't have to rip it out --

9 Francalancia: You don't have to rip it out.

10 Tubbs: You don't have to rip it out --

11 Mazzotta: (inaudible) separate utilities --

12 Tubbs: You just can't have anybody live there.

13 Mitchell: Alright, to answer your question about the
14 utilities, when you pull a permit, I'm a contractor, I know that
15 in the, in the 2000s, they made it mandatory that you had to
16 separate the utilities --

17 Mazzotta: Not with the (inaudible), you know --

18 Mitchell: Well, I'm a little smarter than that because I
19 know that people take advantage. I've been in the rental
20 business for over 30 years. You know, it's, it's a horror of
21 what happens to, you know --

22 Mazzotta: (inaudible)

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TRANSCRIPT

1 Mitchell: Out of control. So, that was the reason why. And
2 that's what really pulled the pin. Because once you pull a
3 permit, now you're subject to all the zoning laws, and that's
4 what got the front door open. I didn't go to Frank, and say, hey
5 Frank, uh, you know, I need to pull a permit. He came to me for
6 the same reason, and that you stated earlier. Hey, I, I don't
7 have a problem pulling permits. I've pulled probably more
8 permits than most people as a contractor, 'cause I've got
9 nothing to hide. But, at the same time, when an official tells
10 me that, you know, things doesn't go my way, you know, this is
11 what, you've gotta rip it out, now, see, that would upset me a
12 little bit.

13 Tubbs: That would --

14 Graca: That would --

15 Tubbs: upset all of us.

16 Graca: It would upset every, single one of us here, but
17 that's still not what we're here for today --

18 Mitchell: Mhmm.

19 Graca: That's the point I'm trying to make.

20 Francalangia: Yeah, our, out job is to just make sure that
21 she did the job, she did her job correctly.

22 Graca: That's it.

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TRANSCRIPT

1 Francalangia: And, you know, once that's done, and then you
2 have to go to appeal it at a higher process.

3 Mitchell: What is, to go where? Where, what's the next
4 process after this? This is the, the Zoning Board of Appeals.

5 Graca: Right, but the, your, your appeal, we're only here
6 today, you're appealing her decision. We can't tell you what to
7 do, or how to fix it.

8 Mitchell: Well, the town's got no answers for me either.

9 Graca: We're not, we're not going to (inaudible) --

10 Kozikowski: Remedy the violation. That's the answer.

11 Mitchell: Well, I've been in violation with my garden. I
12 had two cease and desists. Okay, I mean, it's just a heyday. But
13 that was with the last planner. You know, and that's a bloody
14 garden. Okay, so I don't know what, I just don't want to be here
15 --

16 Graca: I'm not telling you that we're not sympathetic to
17 what you're going through. What I'm telling you is that that's
18 not what we're here for today. We're here to know if Maureen,
19 our zoning board of, or our --

20 Tubbs: zoning enforcement officer --

21 Graca: the zoning enforcement officer did the right thing,
22 or was she in order of what she did. The rest of it is really
23 not relevant.

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TRANSCRIPT

1 Graca: I guess what's he's looking for is that if we
2 overturn Maureen's thing, that gives him open season on being
3 able to have a two-family. I think that's what he's looking for.

4 Mitchell: Well, actually, I was just looking for a
5 nonconforming apartment that would keep with the rules that are
6 set in place. I'm not crazy about somebody going in my house
7 once a year for an inspection because it's \$125, it'll be \$300
8 if because, people just don't know how to spend their money
9 right in Town, you know. So, that's my concern.

10 Graca: I think that's all our concerns. I don't think
11 anybody wants that to happen here, or you.

12 Mitchell: Well, the, the other thing is that, that has to
13 be answered in my opinion as a taxpayer --

14 Graca: Mhmm.

15 Mitchell: is it's been taxed as that.

16 Mazzotta: Do you have those documents?

17 Graca: It's been taxed as what?

18 Mitchell: As a two-family.

19 Francalangia: No, it hasn't.

20 Tubbs: No (inaudible) --

21 Graca: There's not one card here that you're, that says
22 that (inaudible) --

23 Tubbs: It's been taxed as a finished basement --

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TRANSCRIPT

1 Mazzotta: (inaudible) --

2 Tubbs: not a two-family.

3 Francalangia: As a finished basement.

4 Mitchell: I, okay, here's what I did. Okay, when I first
5 checked this out. Went to the Clerk's office and I says, hey
6 look. I'm being taxed, I think, as a two-family. Could you check
7 it out? So, she went next door, looked it up. She went back 10
8 years, she went back 43 years. She came back to the office, and
9 she's around here. She said you're being taxed, to this day, as
10 a two-family. Technically, as an apartment with a single-family
11 dwelling.

12 Tubbs: You have copies of the cards? The assessor --

13 Kozikowski: I just --

14 Tubbs: The assessors cards --

15 Kozikowski: I just want to make a point that I think that's
16 an argument that can be made to the tax assessor, and that's an
17 issue that's not in the purview of the Zoning Board of Appeals.

18 Francalangia: Yeah.

19 Graca: Right, or would we ever vote on that.

20 Mazzotta: (inaudible)

21 Mitchell: Yeah. This is when we bought it. See? And it
22 shows. That. See? Right here.

23 (inaudible)

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TRANSCRIPT

1 Mitchell: And, she went back and she said --

2 Mazzotta: in-law apartment (inaudible) --

3 Mitchell: now, that's her checking it. She said 43 years,
4 you've been taxed as a two-family, technically.

5 Kozikowski: I think you could address that with the tax
6 assessor.

7 Whiteside: You're saying that, that the taxation treatment
8 is --

9 Mazzotta: I think you're just getting --

10 Whiteside: not relevant to the zoning compliance.

11 Kozikowski: Correct.

12 Mazotta: Just, I mean, I own a two-family in Town, I'm not
13 taxed as a two-family. I'm taxed by square footage. You, you
14 know?

15 Kozikowski: Again, no comment on that.

16 Mazzotta: square footage of the building --

17 Mitchell: Actually, a two-family.

18 Mazzotta: (inaudible) many two-families in Town.

19 Mitchell: It's depending on, with an apartment single-
20 family, it's worth more than a two-family. I did find that out
21 from the assessor's office.

22 Francalangia: But they (inaudible) --

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TRANSCRIPT

1 Mitchell: And they found, when they're going around, back
2 in 1966, and they're going around checking, I'm sure that they
3 didn't have the, the sophistication that they have now. Maybe
4 they didn't care too much back in those days. Uh, you know,
5 it's, it wasn't --

6 Tubbs: 1966, throws that whole '48 thing out the window. In
7 1966, it was R-43.

8 Mitchell: Well, at that point it was. And then, the point
9 is, is that they wouldn't have cared if there was an apartment
10 in there or not.

11 Tubbs: Well, it's 2019. Our regs here --

12 Mitchell: It's right there.

13 Tubbs: We're here --

14 Mitchell: She has an up to date copy here. I don't know
15 why. I think everybody else --

16 Mazzotta: This is, this is the most recent field card.

17 Mitchell: That was --

18 Mazzotta: It was in the packet that was sent home to us in
19 the, in the thing.

20 Francalangia: Yeah, yeah.

21 Tubbs: Well, I'm sorry. We're inundated with like, how many
22 pieces of paper. I just didn't see that one, or remember it. And
23 I still can't find it. It's probably here.

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TRANSCRIPT

1 Francalangia: What's the date on it?

2 Mazzotta: I can't find where the, the date. It's here.

3 Look, I feel like I'm still (inaudible) --

4 Tubbs: Well, you know, at this point, that's actually
5 irrelevant. It doesn't matter. That becomes a tax assessor's
6 issue. And he's going to have to go see the tax assessor for it.
7 Um, as --

8 Graca: We can't do anything about the tax assessor.

9 Tubbs: Yeah.

10 Francalangia: No, no. Obviously no.

11 Mitchell: But, it, it just shows the track record, that's
12 all.

13 Tubbs: As Mr. Graca said, we have to follow and make a
14 determination whether our zoning enforcement officer indeed had
15 went through the correct procedures to uh, give you a cease and
16 desist.

17 Griffith: And whether there was a nonconforming use, which
18 existed --

19 Tubbs: Not our job right now.

20 Graca: That's not us. That's --

21 Tubbs: You're appealing, you're appealing the, the zoning
22 enforcement officer's --

23 Tubbs and Francalangia: Cease and desist order.

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TRANSCRIPT

1 Tubbs: That's it. That is all we are here for.

2 Griffith: And if --

3 Francalangia: (inaudible)

4 Griffith: That is correct.

5 (inaudible)

6 Griffith: And if there was an existing nonconforming use
7 that continued to this time, then her order is incorrect, and
8 must be reversed.

9 Francalangia: Right, but you're appealing the decision of
10 the zoning enforcement officer to issue a cease and desist order
11 for an unauthorized basement apartment --

12 Griffith: Correct.

13 Francalangia: in the R-43 zone.

14 Griffith: Correct.

15 Francalangia: That's what you're appealing.

16 Griffith: Correct.

17 Francalangia: I mean, we can't find any evidence that she
18 did anything incorrect when she issued that cease and desist
19 order.

20 Mitchell: For the information that she had.

21 Francalangia: From the information you gave us and the
22 information she had.

23 Mitchell: Hmm.

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TRANSCRIPT

1 Griffith: So, if I'm understanding correctly, you're uh,
2 you, are you or are you not addressing whether or not there
3 existed a nonconforming use on the property between 1954 and
4 September of 1962.

5 Tubbs: From the documentation that you gave us, we can't
6 find --

7 Francalangia: We can't --

8 Tubbs: (inaudible) anywhere.

9 Francalangia: between your documentation and between the
10 documentation we have here, we don't find any --

11 Mitchell: Just in the clerk's office. That's the only
12 information that we have that would prove that. The rest of it,
13 you know, as the flood in this place, God knows where all the
14 information went.

15 Francalangia: Well, you know, like I said --

16 Tubbs: I have no idea about that.

17 Francalangia: Like I said, we don't, we don't --

18 Mitchell: I do, because I had to research it, and that's
19 the answer I got.

20 Francalangia: What?

21 Mitchell: They had a flood in the records, and there is not
22 any old records anymore.

February 26, 2019

TRANSCRIPT

1 Tubbs: Well, I think you went back pretty good on the
2 records for the ones that you have here.

3 Mitchell: Well, we only tried to be thorough on what was
4 here, what was there.

5 Tubbs: We have, you have a lot of documentation here. It's
6 just, everything to me is showing uh, rec room and finished
7 basement. Tony, I think we should make a --

8 Francalangia: Well --

9 Tubbs: I think we should close this.

10 Francalangia: Yeah, I think we, I think we should probably,
11 I don't know if you have any other issues you want to discuss.
12 Uh, we probably should close the hearing on this thing. We could
13 talk about this thing until ten o'clock at night if you want,
14 but it's not going to do us any darn bit of good. Uh, I don't
15 know if you have any other closing remarks.

16 Mitchell: Other than the fact that both the inspectors, it
17 wasn't just one inspector. Both of them came out to the house,
18 they, they said, okay, that this is definitely a two-family
19 house. And it didn't meet now, it didn't meet with the criteria
20 because it was agreed upon by the planner that you know, it was
21 good that we brought both the inspectors out there. But, when
22 they both came out there on the 21st, I had to ask them for the
23 letter. No longer was it a joint thing to find out the truth

February 26, 2019

TRANSCRIPT

1 about the whole thing. It was that it didn't make his case.

2 Therefore, it was something that I had to prove on my own.

3 Kozikowski: We um, just for the record, we never asked the
4 building official to uh, to inspect. Um, the applicant did. I
5 didn't see any reason for or against it. So --

6 Francalangia: Did you hire an inspector?

7 Mitchell: No, this is the Town inspector, and I, and I, and
8 I call him on that. Okay, because I went over to the planning,
9 or to the, to the, to the, to the building inspector and says,
10 you know, we agreed to get a letter. Okay, and not to stand up
11 Marek, but I'm telling you right now. I'm can get him, that we
12 asked, I said we, because we wanted to find out what the story
13 was. Both the inspectors came out to my house. And when I came
14 back, and my attorney was right there next to me when I asked
15 these questions. And I asked the building inspector why he did
16 not get a, a letter to Marek explaining what, what the situation
17 with the house was. He said he didn't want it, okay?

18 Kozikowski: That --

19 Mitchell: That's different. Now, I'm going to finish my
20 statement, Marek. Because at that time, I went over to him and
21 asked him, why did you not want the letter from the building
22 inspector. He says it doesn't help my case.

23 (inaudible side conversation)

February 26, 2019

TRANSCRIPT

1 Mitchell: And I repeated myself as a, as a taxpayer in this
2 Town, I'm, I'm not looking to fight the Town. But I'll be damned
3 if I'm going to have someone fight against me on something that
4 I pay taxes on. Now, I went back, asked him to rewrite the
5 letter, and you have that letter there. And he had not problem
6 in writing up that that house, to the most part, to his
7 knowledge, looked like a two-family house. Okay. Under your
8 criteria of, of, it could be a rec room, or whatever. You know,
9 I, I don't know. There's, there's --

10 Francalangia: That's the --

11 Mitchell: There's certain criteria that makes it an
12 apartment and, and for the most part in New Britain where I
13 bought a house in 19-, that was a 1932 house, right there on
14 Eddy Glover Boulevard.

15 Tubbs: There's that --

16 Mitchell: You know, so there's, there's just different ways
17 of say that it was an apartment. Okay, if they're calling it,
18 and saying half the houses in this town. Okay, I just didn't
19 want to tear out my basement.

20 Francalangia: I know that --

21 Graca: But, I'm telling you that (inaudible) figure out --

22 Francalangia: We're not telling you to tear it out.

23 Mitchell: Okay, that's fine.

February 26, 2019

TRANSCRIPT

1 Graca: I'm not telling you that. I don't think anyone
2 here's telling you that.

3 Tubbs: Absolutely not.

4 Francalangia: No.

5 Whiteside: It depends how you read the cease and desist
6 order. Because it says, return it to a single-family dwelling,
7 and then --

8 Tubbs: That's all that is, not rent that building, not rent
9 that dwelling. That's it.

10 Whiteside: Stop any further --

11 Tubbs: rental of that property. That's it.

12 Whiteside: Well, it's about the conversion. It's, it's
13 stopping the unauthorized conversion.

14 Tubbs: Well, that's --

15 Mazzotta: Because he was separating the electric.

16 Tubbs: That would be the building department --

17 Mazzotta: That was it. That was the trigger right there,
18 separate the electric. You should've just paid the damn
19 electric.

20 Mitchell: Well, no. There's, there's, there's ways of
21 separating. If you separate the first floor from the second, and
22 you put emon demon in between, anyway, it's basically a portable
23 meter. And they're very accurate. And you can put those in, and

February 26, 2019

TRANSCRIPT

1 they're municipality quality. So that's what I was doing. I
2 didn't, I have the same service. I didn't change the service.
3 All I did was take all the wires from the first floor and put
4 them in a separate panel. Most of the house needed rewiring
5 anyway.

6 Tubbs: Are you living in that building now?

7 Mitchell: Absolutely.

8 Francalangia: Well, again, you know, the cease and desist
9 basically is, what it's saying is, it's saying that

10 Mitchell: (inaudible) figure out --

11 Francalangia: it's still one residence. It's not a multi-
12 family residence. That's what it's saying, basically.

13 Mitchell: That's what I was told it was. Okay, I had no
14 problem the way it was going. It's just that people got a hair
15 across them when they made me pull permits and I told them what
16 I was doing. Okay, because under the what I knew, from the, from
17 the Clerk that that was considered an apartment. It's even
18 written in, in the. You guys have to, I don't know what to do
19 with it. Tell me what I can legally do. Alright? I would like to
20 keep it as an apartment, alright? I want to do it legally. I
21 don't want to sit here in front of you guys and, and have a
22 rough time. Nobody needs that.

23 Kozikowski: I think we can address that as staff.

February 26, 2019

TRANSCRIPT

1 Francalangia: You can probably address that as the staff.
2 Have a talk with Maureen and Marek.

3 Mitchell: I've got no problem with that.

4 Francalangia: You know, as soon as you can do it. But, I
5 mean, like I said, or like Nelson said, like I said initially,
6 you know. We are here just to make a decision on whether or not
7 --

8 Graca: And, we're definitely not here to tell you to rip
9 stuff apart from your house.

10 Francalangia: No.

11 Mitchell: Well --

12 Francalangia: Absolutely not. No way. You know.

13 Graca: Nor would --

14 Francalangia: That might be a good way to, to go about it,
15 to move forward uh, if possible.

16 Tubbs: 2018 (inaudible) a finished basement.

17 Francalangia: Yeah, yeah. 2018, yeah. Yeah, it's listed as
18 a finished basement in 2018. You know.

19 Mitchell: Well, it's listed over here as an apartment.

20 Mazzotta: I just don't see a date on this. (inaudible) fold
21 it.

22 Mitchell: (inaudible) the other side. Here's the front side
23 of it.

February 26, 2019

TRANSCRIPT

1 Mazzotta: I can't find the damn date.

2 Francalangia: But that's, that's kind of confusing to me
3 just as an aside. Because the tax records --

4 Mazzotta: That doesn't matter. That's when it was printed
5 out. That doesn't matter.

6 Franclngia: go by the GI, the division plan. I think the
7 tax records use that to develop the taxes.

8 Mazzotta: It does say finished basement --

9 Mitchell: It's not even correct. Not even to the planner.

10 Francalangia: Yeah, but that's the, that's the part that's,
11 that's like a little bit of a confusion here. Because if they're
12 using that to do the taxes, then how can that one over there say
13 --

14 Mazzotta: finished basement.

15 Francalangia: say it's an apartment, and that one two-
16 family --

17 Mazzotta: (inaudible) same thing (inaudible) --

18 Graca: Again, that's, we're going down a road we don't need
19 to. It's a tax issue. If he overpaid taxes, then that's
20 something he should go to the Town tax assessor to figure it out
21 with them.

February 26, 2019

TRANSCRIPT

1 Francalangia: Well, yeah. I mean, that would be the way to
2 go. That would be a good approach to go to the tax assessor and
3 talk with staff.

4 Whiteside: It seems to me that he's asking us to find the
5 ZEO action invalid because she doesn't recognize the
6 nonconforming use that they say exists either tacitly or
7 explicitly. We can't find explicit. He argues that it's tacit.

8 Francalangia: Right. Pretty much that's, I think you kind
9 of hit the nail on the head. Well, any other comments?

10 Tubbs: I make a motion to close this portion of the
11 hearing.

12 Graca: I'll second it.

13 Francalangia: Motion made and seconded. Any discussion?

14 Kristen Grabowski: You're supposed to ask for staff
15 comments.

16 Graca: He did.

17 Kozikowski: I did. I, I gave staff comments.

18 Francalangia, Tubbs, Graca, Whiteside, Commissioner Ryan
19 Zelek: Aye.

20 Francalangia: Well, we'll go right into old business. Old
21 business ZBA 2019-01-01. 1005 Kensington Road, Map 21-1, Block
22 73, Lot 15. David L. Griffith, Esquire, for Liam T. and Cynthia
23 A. Mitchell is appealing the decision of the zoning enforcement

February 26, 2019

TRANSCRIPT

1 officer to issue a Cease and Desist Order for an unauthorized
2 basement apartment in the R-43 zone per Berlin Zoning
3 Regulations XV.A.1. Can I have a motion to approve this
4 application?

5 Graca: I'll make a motion to approve the application.

6 Kozikowski: Wait, that's not --

7 Tubbs: That's not an application --

8 Kozikowski: It's not an application. It's --

9 Francalangia: to approve this decision --

10 Tubbs: to uphold the --

11 Kozikowski: to uphold the --

12 Graca: I will.

13 Francalangia: We have a motion made to uphold this
14 decision. Can I have a second?

15 Tubbs: I thought Nelson seconded it.

16 Graca: No, I made the motion.

17 Tubbs: Oh, I'll second it.

18 Francalangia: Uh, all in favor, say aye.

19 Zelek: Aye.

20 Whiteside, Graca, Francalangia: Aye.

21 Tubbs: Aye.

22 Francalangia: All opposed? Decision is upheld.

23 Kozikowski. Okay. Well, okay.

Town of Berlin: Zoning Board of Appeals

February 26, 2019

TRANSCRIPT

1 Francalangia: Alright, so that, I guess you're going to
2 have some staff discussions

3 Tubbs: They'll try to point you in the direction to rectify
4 your problem.

5 Kozikowski: Set up a meeting sometime next week.

6 Mitchell: Okay.

7 Francalangia: Sorry we couldn't be of much more help. That
8 the process we've got to go through, I guess.

9 END TRANSCRIPT


10 (Track 5M - 1:20)

Respectfully submitted,


Kristen M. Grabowski

Transcriptionist

Subscribed and sworn to before me
this 9th day of May, 2019


Leticia J. Paonessa, Notary Public

My Commission Expires Oct. 31, 2023

Town of Berlin – Zoning Board of Appeals

February 26, 2019 (Track 5a – 1:55)

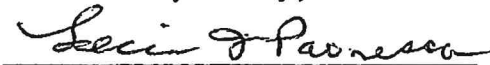
CERTIFICATION

I, Kristen Grabowski, transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

 5/9/19
Signature of Approved Transcriber Date

Kristen Grabowski
Typed or Printed Name

Subscribed and sworn to before me
this 9th day of May, 2019


Lecia J. Paonessa, Notary Public

My Commission Expires Oct. 31, 2023

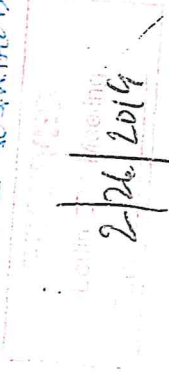
RECORD ITEM #6

ZONING ORDINANCE

Official Record to ZBA
OF THE TOWN OF

Berlin, Conn.

Exhibit 1 submitted by Attn. C. R. K. + W.



AS ADOPTED BY THE

Zoning Commission

August 6, 1948

ZONING ORDINANCE

Berlin, Conn.

The Zoning Commission hereby adopts the following regulations:

SECTION I—KINDS OF ZONES

For the purpose of promoting the health, safety, morals and general welfare of the community; for the lessening of congestion in the streets; for providing adequate light and air; for preventing the overcrowding of land and avoiding undue concentration of population; to facilitate adequate provision of transportation, water, sewage, schools, parks and public requirements; to conserve the value of buildings and encourage the most appropriate use of land throughout the Town; for the purpose of regulating and restricting the location of buildings designed for specific uses; to regulate and limit the height and bulk of building hereafter erected; to regulate and determine the area of yards, courts and other open spaces for buildings hereafter erected; the Town of Berlin is hereby divided into Five (5) Zones or Districts as follows:

1. "A" Residence Zone
2. "B" Residence Zone
3. "C" Residence Zone
4. Business Zone

Amendment to Section I—Kinds of Zones.

6. Farm Zone. Adopted August 6, 1948.
Attach to Page 3

SECTION II—RESIDENCE ZONES

In a Residence Zone, subject to the provisions of Section V, no building or premises shall be used and no building shall be erected or altered, which is arranged, intended or designed to be used except for one or more of the following uses:

1. Dwellings, including the office of a physician, surgeon, dentist, architect, engineer, lawyer, sales agent, dressmaker, artist, or musician, when situated in the same dwelling or apartment used by such physician, surgeon, dentist, architect, engineer, lawyer, sales agent, dressmaker, artist, or musician as his private dwelling, or the renting of rooms or the furnishing of table board to not more than four paying guests in a building used as a private residence.

2. Churches.
3. Schools, public libraries or public museums.
4. Clubs, except clubs the chief activity of which is a service carried on as a business.
5. Philanthropic or eleemosynary uses of institutions other than correctional institutions or asylums for the insane.
6. Parks, playgrounds and recreation building.
7. Farming, truck gardening, nurseries or greenhouses.
8. Accessory uses customarily incident to the above uses, the term "accessory use," however, not including a business, or any building or use, located on the same lot with the building to which it is accessory. A building or group of buildings for more than three motor vehicles shall not be permitted as an accessory use; but such a garage or garages need not be included by the motor vehicles owned by the occupant of the premises to be within the definition of an accessory garage. This provision shall not be intended to limit the number of commercial trucks or cars used upon a farm.
9. A billboard, signboard or advertising sign shall be in no case permitted as an accessory use. The placing of a "for sale" or "for rent" sign not exceeding four (4) square feet in area announcing the existence of an enterprise located on the premises, shall, however, be permitted as an accessory use.
10. In an "A" and "B" Residence Zone, no dwelling shall be erected, altered or used except as a one-family detached dwelling.
11. In a "C" Residence Zone no dwelling shall be erected, altered or used except as either a one- or a two-family detached or semi-detached dwelling.

SECTION III—BUSINESS ZONE

1. A Business Zone no building or premises shall be used and no building shall be erected or structurally altered, except in conformity with Sections IV and XIII, which is arranged or designated to be used for other than the following uses:

1. Store or shop for retail trade, shop for making articles to be sold at retail on the premises, restaurant, hotel, theatre, bank, office, studio, sample room, public utility building, printing and publishing, mortuary, amusement building or park.
2. A garage for storage or repair of motor vehicles and gasoline service station as provided for in Section XIII.
3. A use permitted in the Residence Zones shall be permitted in the Business Zone.

Nothing in this section shall be deemed to exclude a newspaper establishment, job printing or accessory printing establishment or an electric substation from a Business Zone.

SECTION IV—INDUSTRIAL ZONE

In an Industrial Zone no building or premises shall be used and no building shall be erected which is intended or designed to be used for any of the following uses, except as provided for in Sections V and XIII:

1. Multi-family dwelling including any building accommodating more than four families.
2. Ammonia, gas, chlorine or bleaching powder manufacture.
3. Blast furnaces, except converters used in conjunction with foundries.
4. Asphalt and Creosote treatment or manufacture.
5. Fertilizer, glue or gelatine manufacture where the processes include the refining or recovering of products from fish, animal refuse or mash.
6. Manufacturing or storage of fireworks and explosives.
7. Stock yards or commercial slaughtering.
8. Paint, oil, varnish, turpentine, shellac or enamel manufacture.
9. Petroleum refining.
10. Raw hides storage, cleaning, curing or tanning.
11. Automobile junk yard or refuse dump.
12. Billboards and advertising signs, except as displayed upon the walls, or directly attached to the walls or roof of a building.
13. Manufacturing of sulphurous, nitric, picric, carboic or

Section IVa—Farm Zones. Adopted August 6, 1948. In a farm zone no building or premises shall be used, or no building shall be erected, which is intended or designed to be used for any other use than as a farm dwelling, or accessory and necessary buildings to be used in conjunction with the use of the land for farm purposes.

Attach to Page 5

SECTION V—NON-CONFORMING BUILDINGS AND USES

Any non-conforming use existing at the time of the passage of these regulations may be continued, and any existing building designed, arranged, intended or devoted to, a non-conforming use may be reconstructed, structurally altered, and the non-conforming use therein changed subject to the following regulations and in conformity with Section XIII.

- a. The cost of structural alterations made in such buildings shall in no case exceed fifty per cent of its assessed value, nor shall the building be enlarged unless the use therein is changed to a conforming use.

SECTION XX—DEFINITIONS

Certain words in this ordinance are defined for the purpose thereof as follows:

- a. Words in the present tense include the future, the singular number includes the plural, and the plural the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "zone" includes the word "district."
- b. A "building" shall be regarded for the purpose of these regulations as each of the independent units into which it is divided by party walls.
- c. A "non-conforming building or use" is one that does not conform with the use regulations of the zone in which it is situated.
- d. A "lot" is a parcel of land occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are arranged and designed to be used in connection with such buildings.
- e. A "corner lot" is a parcel of land at the junction of and fronting on two or more intersecting streets.
- f. An "interior lot" is a lot other than a corner lot.
- g. The "depth of lot" is the mean distance from the street line of the lot to its rear line measured in the general direction of the side lines of the lot.
- h. The "street line" is the dividing line between the street and the lot.
- i. The "rear yard" is an open unoccupied space on the same lot with a building—between the rear wall of the building and the rear line of the lot.
- j. The "front yard" is an open unoccupied space on the same lot with a building situated between the street wall of the building and the street line of the lot.
- k. A "side yard" is an open, unoccupied space on the same lot with a building situated between the building and the side line of the lot and extending through from the street to the rear yard, or where no rear yard is required, to the rear line of the lot.
- l. An "inner court" is an open, unoccupied space on the same lot with a building not extending to either the street or the rear yard.
- m. An "outer court" is an open, unoccupied space on the same lot with a building extending to either the street or the rear yard.
- n. The "building area" is the maximum horizontal projected area of a building and its accessories.
- o. The "least dimension" of a court or yard is the least of the horizontal dimensions of such a court or yard.

p. The "length of an outer court" is the horizontal distance between the end opening on a street or a rear yard and the end opposite such street or rear yard.

q. "Dwelling" is a building arranged or designed to be occupied by not more than two families.

r. The "height of a court or yard" is the vertical distance between the lowest level of such court or yard to the highest point of any bounding wall. Where there is a gable or mansard, the height shall be measured to the average height of such gable or mansard, provided the combined width of the dormers in the roof shall not exceed thirty percent of the length of the building on the court or yard. In case the combined width of all dormers exceeds thirty percent of the length of the building on the court or yard, the height shall be measured to the eaves of the highest corner. In any given case, the height of the court or yard shall be measured to the eaves, gable or mansard giving it the maximum height.

s. The "height of a building" is the vertical distance measured in the case of flat roofs from the curb level to the highest point of the roof adjacent to the street wall, and in the case of pitched roofs, from the curb level to the average height of the gable. In the case of both flat roofs and pitched roofs, the measurements shall be made through the center of the street facade. Where no roofs beams exist or there are structures wholly or partly above the roof, the height shall be measured from the curb level to the highest point of the building. Where the walls of a building do not adjoin the street, the average level of the ground along the front wall of the building may be taken in measuring its height instead of the curb level.

t. A "story" is that part of a building between any floor and the floor above, or in its absence the ceiling or roof above. A story in which persons live, sleep, work, congregate, the ceiling of which is more than three feet above the curb level taken at the center of the street facade, shall not be counted as that fraction of a story which its height above such curb level bears to the height of the story. A story which extends less than three feet above such curb level shall not be counted in determining the number of stories. Any story under the pitched roof at the top of the building, the floor of which is not more than two feet below the plate, shall be counted a half-story when not more than sixty percent of the said floor area is used for rooms, baths, or toilets; otherwise it shall be counted as that fraction of a story which its floor area in room, baths, or toilets bears to the entire floor area.

u. The "curb level" is the permanently established grade of the street in front of the lot.

v. A "family" as used in these regulations shall be deemed any number of individuals living and cooking together as a single house-keeping unit.

RECORD ITEM #7

Exhibit 2 submitted by [illegible]
DESIGN AND CONSTRUCTION OF THE
EXISTING USE AS A BASEMENT DWELLING

(October 13, 1954 to September, 1962)

2/26/2019
The Zoning Ordinance adopted by the Berlin Zoning Commission on August 6, 1948 added a

Farm Zone. In the Farm Zone, a “farm dwelling” was permitted. Section IVa of the Ordinance defined Dwelling as: “a building arranged or designed to be occupied by not more than two families.” The Building Permit issued October 13, 1954 and the Certificate of Occupancy issued on September 29, 1955, in error, states that the building was to be used as a Dwelling. The Building Permit by its terms was void on October 13, 1955. A new Application for Building Permit was dated September 21, 1956 with the written notation that the “application takes situation as it exists”, which included the plumbing built into the original slab.

The Plot Plan dated April 26, 1958 indicates an “Existing House” with the original slab containing the plumbing. The photos and Liam Mitchell’s testimony evidence the original plumbing configuration which have served as a separate basement dwelling since on or about April 26, 1958. Mr. Mitchell will testify that the bathroom shower stall, toilet and kitchen sink are connected to the original plumbing and that the kitchen cabinets are vintage 1950’s constructed out of one piece of plywood (unitized) rather than several pieces (modular). Mr. Mitchell’s testimony and the photos reveal the type of cabinets existing at that time. According to General Electric, the Wall Oven built into the basement kitchen cabinets was manufactured in December, 1960. (See photos of Wall Oven and serial # shown installed in the original kitchen cabinets.)

The initial construction of the house included plumbing in the basement for an apartment dwelling. On December 21, 2018, Frank Van Linter Town of Berlin Building Official examined the plumbing in the basement and he found the “use of cast iron and/or clay type plumbing which is under the slab.” He concluded that the slab and plumbing are original and it serves devices and appliances in the basement.

THE CONTINUED USE OF THE BASEMENT DWELLING

(September, 1962 – February 26, 2019)

From September, 1962 when the zoning ordinance was amended, the already existing use of the basement as an apartment has continued unabated until the present. We know from Mr. Mitchell's testimony that after his inquiry with the Berlin Fire Marshall, that a couple of rooms on the first floor were damaged by fire. The demolition of the building left the basement unaltered as shown on the rebuild plans explained by Liam Mitchell. The plumbing utilized for the bathroom and kitchen cabinets remained intact. The recent photos show the same configuration with the 1960 wall oven and the 2004 cooktop, which likely replaced the prior cooktop.

The tax assessors' cards evidence an uninterrupted continuance of the use as a basement dwelling. In 1966, the tax assessor's card notes the existence of a finished basement and a toilet room. On July 22, 1975, the inspections conducted by the tax assessor's office correctly notes that configuration of the basement as a dwelling, containing a kitchen, bathroom and finished rooms. The 1986 tax assessor card does note that continued existence of the finished basement with a bathroom. The 1996 and Oct. 1, 2014 inspection acknowledge the long-time use of the basement as an apartment with walkout.

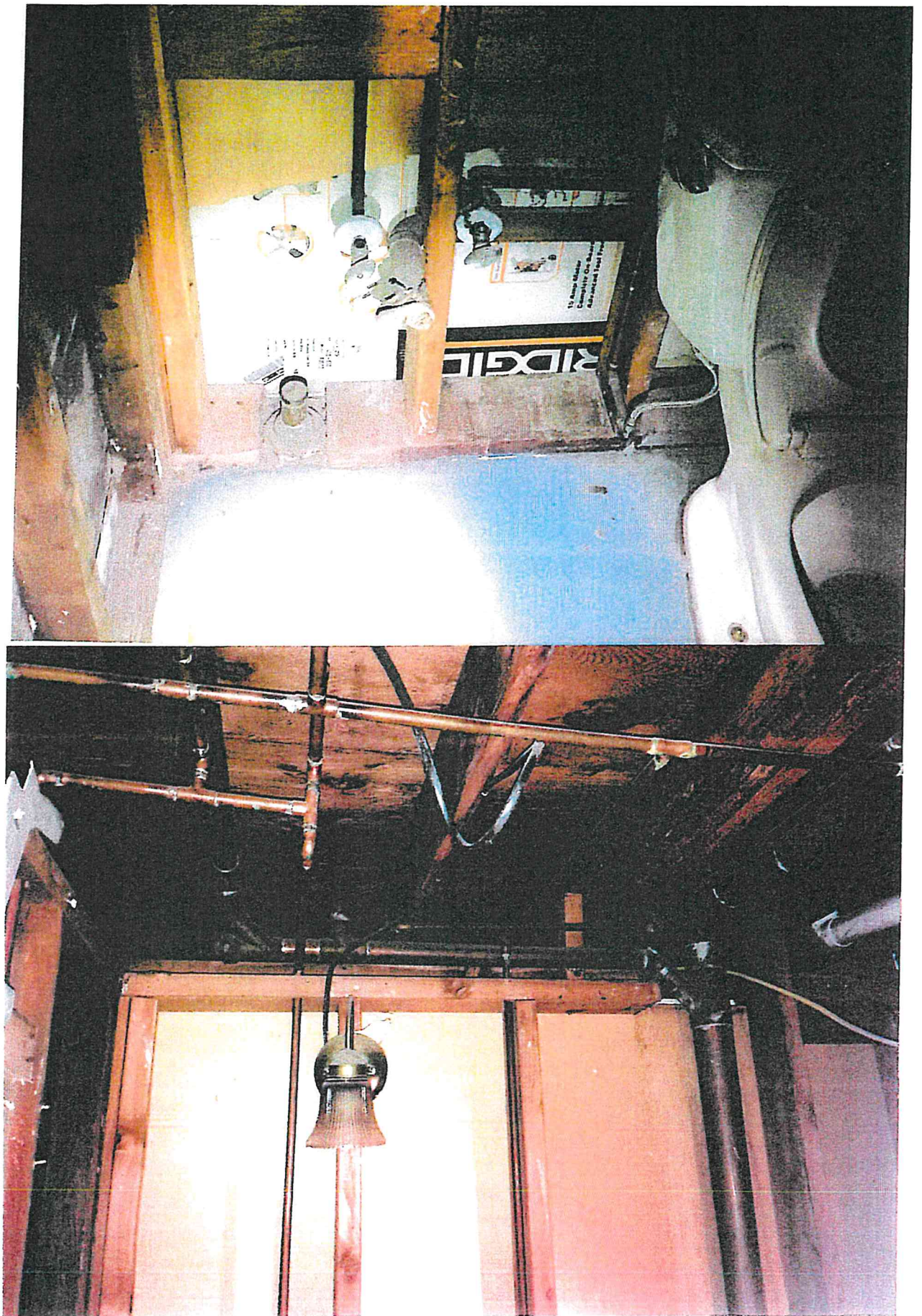
THE ZBA SHOULD REVERSE THE CEASE AND DESIST ORDER

The cease and desist order issued by the zoning enforcement officer must be reversed for the following reasons:

1. The use of the basement as an apartment is protected by law as a non-conforming use.

The basement dwelling was lawful at the time the house was constructed in 1954, as it was originally arranged and designed to be a farm dwelling used by up to two families and existed when the zoning ordinance changed in September, 1962. The original plumbing remains intact and the kitchen and full bathroom have existed for a long period of time.

2. Although the area is no longer predominantly devoted to farming, the use of the basement reflects the original use as a second dwelling unit known to the neighborhood.
3. The owners of the property have not abandoned the use of the basement as a separate dwelling, which is reflected in the continued use evidenced by the built-in shower with the toilet and the kitchen cabinetry with the built-in wall oven and stovetop. The unabated use is reflected in the tax assessors' cards from 1966 to the present. The recent finding by the Berlin Building Official after an inspection that the original plumbing from 1954 exists and is connected to the present shower, toilet and kitchen sink in the basement.

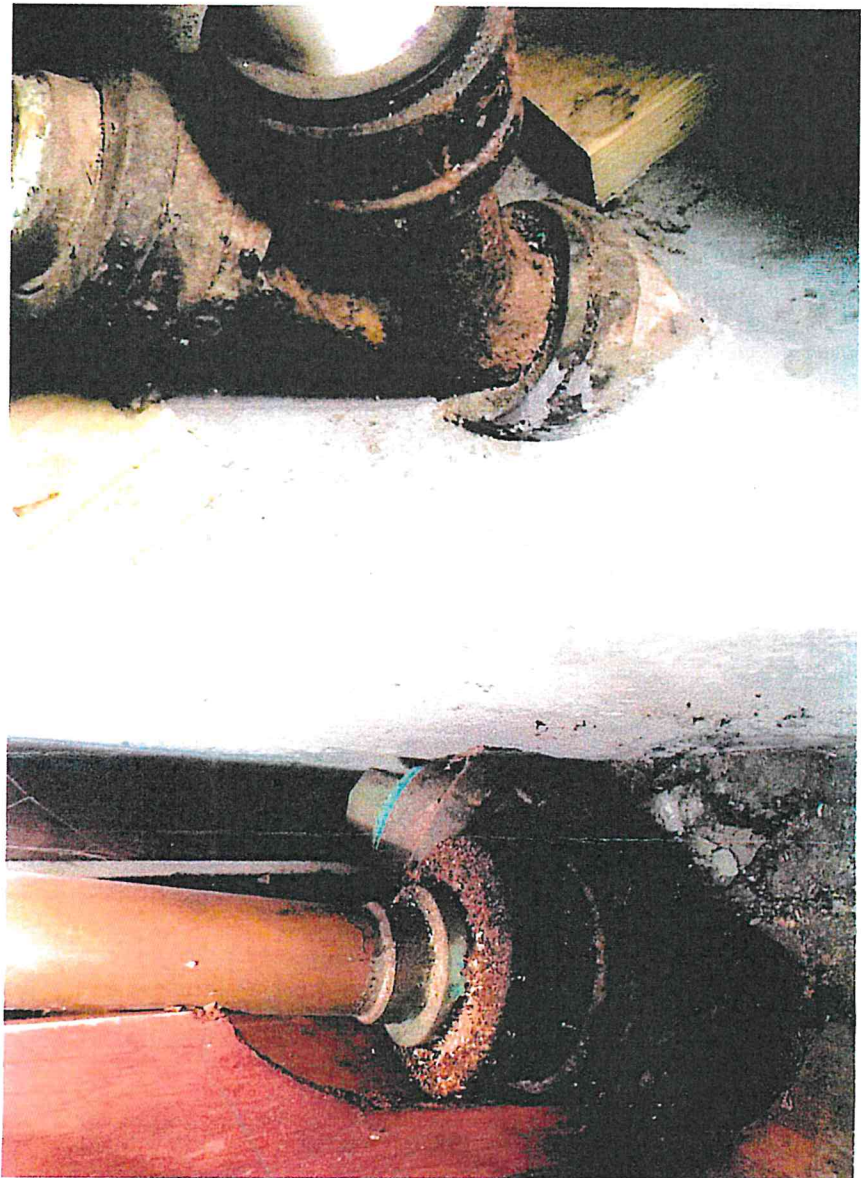
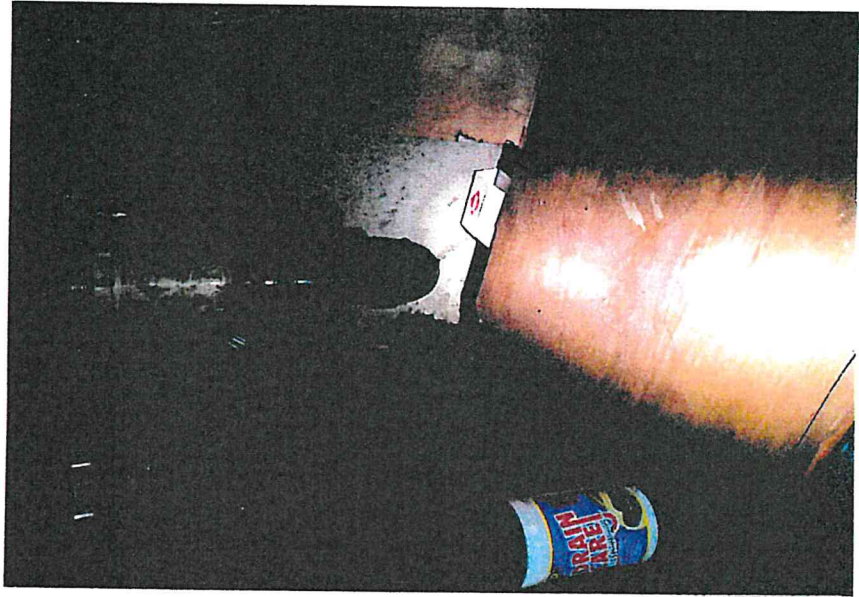


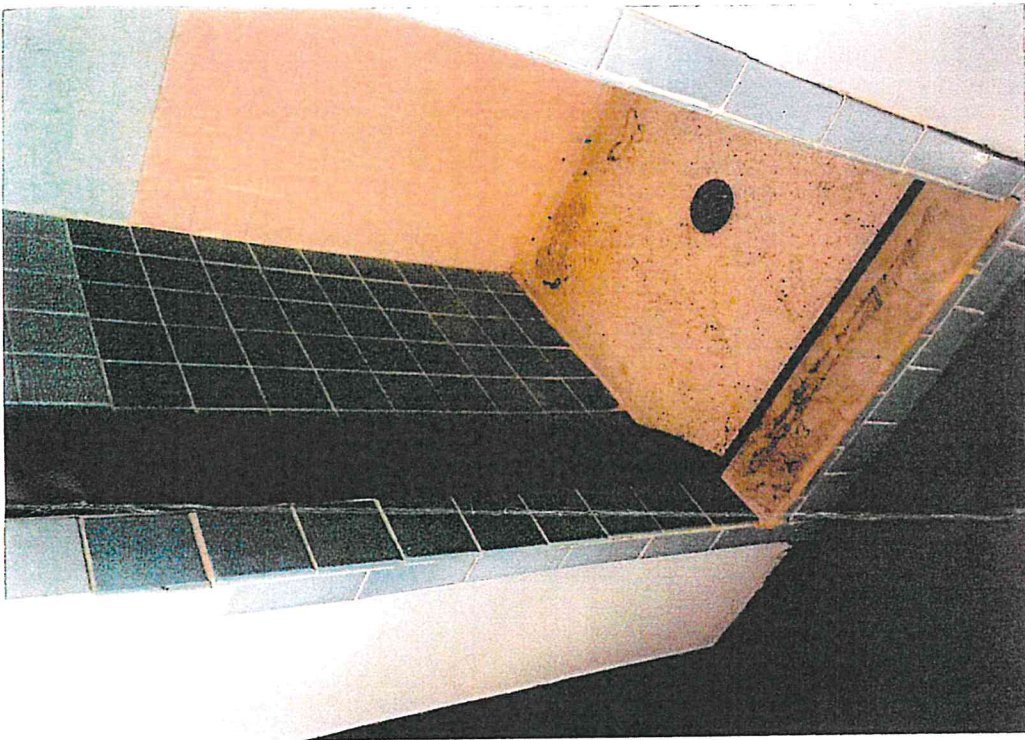
Basement Plumbing 2

Toilet & Shower Plumbing



BATHROOM PLUMBING





Front Shower



Back Shower

RECORD ITEM #9

LEGAL NOTICE

TOWN OF BERLIN

ACTIONS TAKEN BY THE ZONING BOARD OF APPEALS

At a special meeting of the Berlin Zoning Board of Appeals, held February 26, 2019, the following actions were taken:

Unanimously upheld the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order for an unauthorized basement apartment at 1005 Kensington Road in the R-43 zone, thereby the appeal of David L. Griffith, Esq., for Liam T. and Cynthia A. Mitchell was denied.

Unanimously adopted the 2019 meeting dates as proposed.

Unanimously approved a slate of officers.

Sandra Coppola, Secretary
Zoning Board of Appeals

To be advertised in the New Britain Herald:
Wednesday, March 6, 2019

RECEIVED FOR RECORD
BERLIN TOWN CLERK

2019 MAR -4 PM 3:07

Kathy J. Hall

BERLIN, CT.

Page : 1 of 1 03/06/2019 07:58:19

Order Number : 10031153
PO Number : MAUREEN GIUSTI
Customer : 20049945 BERLIN, TOWN OF
Contact :
Address1 : 240 KENSINGTON RD.
Address2 :
City St Zip : BERLIN CT 06037
Phone : (860) 828-7000
Fax :
Credit Card :
Printed By : Joanne Reynolds
Entered By : Joanne Reynolds

Ad Number : 10048840
Ad Key :
Salesperson : 2024 - JOANNE REYNOLDS
Publication : New Britain Herald
Section : Legals
Sub Section : Legals
Category : Legals
Dates Run : 03/07/2019-03/07/2019
Days : 1
Size : 1 x 2.70, 30 lines
Words : 100
Ad Rate : Legal
Ad Price : 74.10
Amount Paid : 0.00
Amount Due : 74.10

Keywords : LEGAL NOTICE TOWN OF BERLIN ACTIONS TAKEN BY THE Z
Notes :
Zones :

LEGAL NOTICE
TOWN OF BERLIN
ACTIONS TAKEN BY THE
ZONING BOARD
OF APPEALS

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Berlin Zoning Board of Ap-
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and Cynthia A. Mitchell was
denied.

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2019 meeting dates as pro-
posed.

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slate of officers.

Sandra Coppola, Secretary
Zoning Board of Appeals

Invoice signed
3/12/2019

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Legals

LEGAL NOTICE
TOWN OF BERLIN
ACTIONS TAKEN BY THE ZONING BOARD OF APPEALS

At a special meeting of the Berlin Zoning Board of Appeals, held February 26, 2019, the following actions were taken:
Unanimously upheld the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order for an unauthorized basement apartment at 1005 Kensington Road in the R-43 zone, thereby the appeal of David L. Griffith, Esq., for Liam T. and Cynthia A. Mitchell was denied.
Unanimously adopted the 2019 meeting dates as proposed.
Unanimously approved a slate of officers.
Sandra Coppola, Secretary
Zoning Board of Appeals

Legals

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Notice of Public Hearing
Wednesday, March 13, 2019 at 7:00 pm

Town Hall - 131 Cedar Street
Room L-101

Notice is hereby given that the Newington Town Plan and Zoning Commission will hold a Public Hearing on Wednesday, March 13, 2019 to consider the following petitions:

1. Petition #03-19: Zoning Text Amendment (Section 3.11, Section 3.16, and Section 6.11: Motor Vehicle Service Uses, Town Plan and Zoning Commission, applicant.

2. Petition #04-19: Special Permit (Sec. 3.11.6: Restaurant) at 2184 Berlin Turnpike, Bianca Real Estate LLC, owner; Melissa Taricani, applicant; Anthony Taricani, 230 Jubilee Street, New Britain CT, contact.

3. Petition #05-19: Special Permit (Sec. 6.2.4: Free-Standing Sign) at 3443 Berlin Turnpike, Garrett Homes LLC, owner; C+ Sign Service, applicant; David Hemming, 500 Industrial Park Road, Deep River CT, contact.

At this Public Hearing written communications pertinent to the above petitions will be received and interested persons may appear and be heard. These petitions are on file in the Office of the Town Planner for public inspection.

Submitted,

Craig Minor, AICP
Town Planner

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RETURN DATE: MARCH 26, 2019

SUPERIOR COURT

THE NEW SECTION - GLEN OAKS
CONDOMINIUM, INC.

J.D. OF NEW BRITAIN

V.

AT NEW BRITAIN

WIDOWER, HEIRS, REPRESENTATIVES,
AND/OR CREDITORS OF THE ESTATE OF
HERBERT F. KENWORTHY;
JOHN E. KOHLER III, HEIR-AT-LAW;
JILL MALONE, HEIR-AT-LAW;
JAMES MALONE, HEIR-AT-LAW;
SANTANDER BANK, NATIONAL ASSOCIATION

STATE OF CONNECTICUT
JUDICIAL BRANCH, OFFICE OF THE PROBATE
ADMINISTRATOR AND STATE OF
CONNECTICUT DEPARTMENT OF
REVENUE SERVICES

FEBRUARY 05, 2019

STATE OF CONNECTICUT
NOTICE TO WIDOWER, HEIRS, REPRESENTATIVES, AND/OR CREDITORS OF THE ESTATE OF HERBERT F. KENWORTHY, AND JOHN E. KOHLER III, HEIR-AT-LAW; JAMES MALONE, HEIR-AT-LAW AND JILL MALONE, HEIR-AT-LAW AND TO ALL UNKNOWN PERSONS CLAIMING OR WHO MAY CLAIM ANY RIGHTS, TITLE INTEREST OR ESTATE IN OR LIEN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THIS COMPLAINT, ADVERSE TO THE PLAINTIFF, WHETHER SUCH CLAIM OR POSSIBLE CLAIM BE VESTED OR CONTINGENT.

The Plaintiff has named Widower, Heir, Beneficiaries, Representatives and Creditors of HERBERT F. KENWORTHY, Deceased and JOHN E. KOHLER III, JILL MALONE AND JAMES MALONE, Heirs at Law, as party defendants in the complaint which it is bringing to the above named court seeking a foreclosure of its unpaid common fees upon premises known as 630 CYPRESS ROAD UNIT E, BUILDING NO. 27, NEWINGTON, CT. This complaint is returnable to court on MARCH 26, 2019 and will be pending therein after that date.

The plaintiff has represented to said court, by means of an affidavit annexed to the said complaint, that despite all reasonable efforts to ascertain such information, it has been unable to determine the residence of the Widower, Heir, Beneficiaries, Representatives and Creditors of HERBERT F. KENWORTHY, Deceased and JOHN E. KOHLER III, JILL MALONE AND JAMES MALONE, Heirs at Law.

Now, therefore, it is hereby ordered under C.G.S. § 52-69 that notice of the institution of this action be given to each such defendant by some proper officer causing a true and attested copy of this order to be published in the New Britain Herald, once a week for 2 weeks, commencing on or before 3-9-2019, and that return of service be made to the Court.

Hon. J. Morgan

Stefan Pelaski,
Assistant Clerk,
Superior Court
Judicial District of New Britain

SUDOKU

8	6	9		4	3		5
2							4
	7			2			8
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	5	7	4	1	2		
5				6			7
7							9
9		8	2		7	6	3

See Sudoku solution on TV page.

Legals

Legals

NEIGHBORHOOD ASSISTANCE ACT

SOLICITATION OF PROPOSALS
The City of New Britain is accepting proposals from non-profit organizations for community programs to be designated as eligible for business contributions under the State of Conn. 2019 Neighborhood Assistance Act Tax Credit Program. Interested organizations should submit a Proposal no later than April 1, 2019 at 4:00 pm to the Department of Community Development, City Hall, 27 West Main St., New Britain, CT 06051. For proposal materials, e-mail mpavano@newbritanct.gov

NOTICE OF PUBLIC HEARING AND VOTE
The Common Council of the City of New Britain will hold a Public Hearing on April 17, 2019, at 7:00 p.m. A vote to approve applications is anticipated to be on May 6, 2019, at 7:00 p.m. Both events will take place in the Council Chambers of City Hall.

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RECORD ITEM #10



Town of Berlin

Planning and Zoning Department

240 Kensington Road
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FILE COPY
ZBA 2019-01

Planning and Zoning Commission
Zoning Board of Appeals
Conservation Commission
Historic District Commission

CERTIFIED MAIL #70121010000269912876

February 28, 2019

David Griffith, Esq.
Griffith and Kelly LLC
66 Cedar Street
Newington, CT 06111

RE: ZBA Application #2019-01-01
1005 Kensington Road
Map 21-1/Block 73/Lot 15

To Whom it May Concern:

At its special meeting of February 26, 2019, the Zoning Board of Appeals upheld the determination of the Zoning Enforcement Officer to issue a Cease and Desist Order for an unauthorized basement apartment, thereby denying appeal request ZBA #2019-01 for property at 1005 Kensington Road.

Sincerely,

Marek Kozikowski, AICP
Town Planner

Marek Kozikowski, AICP, Town Planner. 860-828-7060. mkozikowski@town.berlin.ct.us
Maureen Giusti, Assistant Town Planner/ZEO. 860-828-7008. mgusti@town.berlin.ct.us
Frances Semnoski, Land Use Administrator. 860-828-7066. fsemnoski@town.berlin.ct.us

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Griffith, Esq.
Griffith and Kelly LLC
66 Cedar Street
Newington, CT 06111



9590 9402 1787 6074 2620 13

2. Article Number (Transfer from envelope label)

7012 1010 0002 6991 2876

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A. Signature

[Handwritten Signature]

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Kathy Sweeney

C. Date of Delivery

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3. Service Type

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- ☐ Collect on Delivery Restricted Delivery (over \$500)
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Domestic Return Receipt

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TOWN OF BERLIN
240 KENSINGTON ROAD
BERLIN, CT 06037

Re: Revision ZBA 2019-01