

**Proposed Findings of Facts**

Prepared By: Maureen K. Giusti, Acting Town Planner

Date: November 21, 2020

RE: 1005 Kensington Road:  
Remand issued by Superior Court in the matter of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals concerning the Board's denial of the plaintiffs' appeal of a Cease and Desist Order issued by the Zoning Enforcement Officer for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations §XV.A.1.

1. Town records do not show any permits indicating that the house was built, rebuilt or renovated for use as a two-family dwelling. Therefore, a claim of an existing nonconformity for use as a two-family house is not supported by the record.
2. Conditions of the house as presented by the appellant with photographs and testimony regarding its amenities, do not indicate authorization or use of the basement as a rentable dwelling unit.
3. There is no record of any prior owner working to reconcile any claimed inaccuracy in the Town's records, including tax records, that the house is a single-family dwelling.
4. The Town took action at the time that rental as a two-family dwelling was discovered. Any use of the property with two separate dwelling units was concealed from the Town. The current owner, with knowledge that the town did not recognize the property as a two-family, chose to rent the unit. This appeal is the result of the illegal rental being discovered by the Town.

(See attached and previously distributed record for supporting references)

MEMORANDUM OF STAFF COMMENTS – UPDATED 11-20-2020

STAFF COMMENTS IN SUPPORT OF THE PROPOSED FINDINGS OF FACTS PREPARED BY M. GIUSTI FOR  
REMAND HEARING 11-24-2020

1. Claim of an Existing Nonconformity for use as a two-family house is not supported by the record. Town records do not show any permits indicating that the house was built, rebuilt or renovated for use as a two-family dwelling.  
Building Department, septic and Assessors records have been provided from the time of construction and for the subsequent rebuild for the property and show no indication that any owners of the property were authorized to install and occupy the basement as a separate apartment/housekeeping unit or paid taxes on the same.
  - a. The "Zoning Ordinance of the Town of Berlin, Connecticut as adopted by the Zoning Commission August 6, 1948 – Revised July 21, 1954" would have been in effect at the time of the building permit application, permit issuance and issuance of the original Certificate of Occupancy. Page 22, Section XXII Definitions, subsection v. states "A "family" as used in these regulations shall be deemed any number of individuals living and cooking together as a single housekeeping unit." (ATTACHED)
    - i. Permit and Certificate of Occupancy documents from the time period reference "No. of Families" and Housekeeping units"
    - ii. 1954 Initial build was in the Farm zone. While the Farm Zone at the time allowed 2-family dwellings, all initial construction and rebuild documents refer to a single housekeeping unit.
      1. Handwritten data completed on the Application for Building Permit dated October 6, 1954, lists "Zone Farming"; and "NO. OF ROOMS 6". (ATTACHED)
      2. The related Building Permit dated October 13, 1954 specifies the "Number of Housekeeping Units: one".
      3. The Certificate of Occupancy dated September 29, 1955 states "...the property has been inspected and found to conform with the zoning ordinance and permit No. A1436 issued... Oct 13, 1954" and "Buildings to be used for Dwelling"; "No. of Families 1".
      4. Application for Building Permit A2178 dated September 21, 1956, has handwritten notation "Certificate of Occupancy issued in error Sept 29, 1955 (#A1173)" Should have been renewal of Building Permit #A-1436 This application takes situation as it exists, a new permit is applied for" And includes this repeated data: "Zone Farming"; and "NO. OF ROOMS 6".
  - b. Building Permit #3363, dated August 11, 1969 was for a 52 ft. x 22 ft. 1-story building was issued for the rebuild of the home after what was presented as being a fire. The number of housekeeping units is left blank.
    - i. Staff would acknowledge that any nonconformities in existence at that time would have been allowed to continue. No nonconforming apartment or 2<sup>nd</sup> housekeeping unit or finished basement was indicated on applications to the Town.
    - ii. The related Soil test report shows calculations for 3-Bedrooms.



- iii. The "Application for the Installation, Alterations or Repair of Private Sewage Disposal System" dated 8/19/69 is completed with "Description: Families 1 Rooms 7 Bedrooms 3; Bathrooms 1 Showers 1 Lavatories 1; Basement Fixtures (only with special permission)       " (*left blank*). Permit #2404 was attached to same in the Building Department records.
    - iv. The 1966 Assessor's card indicates the basement is 1 room with rough plumbing only. This card would have been updated after the reconstruction and until the creation of the next 10-year card in 1976.
2. After a Certificate of Zoning Compliance is obtained, zoning review is prompted by new permits or zoning violation complaints. Without those the Town would have no need to enter and inspect a single or two-family property to determine compliance with zoning regulations.
  - a. Permits should have been obtained from the building and health departments for installation of the amenities to finish the basement with plumbing and electrical fixtures and bedroom spaces.
    1. Those applications would have prompted review for compliance with the zoning regulations (as stated on the header of permits) and,
    2. Those permits would have prompted tax assessment inspection.
  - b. Tax assessment records (provided in the record) consistently list the house a 1-family.
    - i. A spot check of older homes in the area that was once zoned Farm Zone, show that the assessor records listed the nonconforming use as 2-family, with apartment or similar designation. (samples are expected to be provided at the hearing).
    - ii. Any indication of amenities on an assessor card are an indication of found amenities for taxation purposes and do not reflect approval, permitting or zoning authorization of same.
3. Conditions of the house as presented by the appellant do not indicate authorization or use of the basement as a rentable dwelling unit.
  - a. Egress openings, specifically as presented by the appellant, from an above grade basement or into a basement garage area are not rare or unusual and would not be reflective of whether or not the interior space was finished or the occupancy thereof.
  - b. Door hardware, including security locks are not indicative of the occupancy or a dwelling and do not require permits for installation.
4. Regardless of any amenities that exist which would result in a dwelling unit and/or might have been allowed to remain; use of the property for other than as a single-family property and single housekeeping unit was not acknowledged or authorized by the Town.
  - a. The town has no records that the house was a two-family at the time when 2-family dwellings would have been permitted.
    - i. Tax assessment records going back decades do not show use or payment of taxes for 2-family occupancy.
    - ii. The amenities were presented by the appellant as appearing to be decades old and installed by the original owner, a skilled cabinetry craftsman, appear to have been installed after obtaining occupancy for the dwelling with 3-bedrooms and no fixtures in the basement.

- iii. The town acknowledges a single address for the property. The Engineering Division of the Town Public Works Department assigns official addresses. No address or unit number has been assigned for a 2<sup>nd</sup> dwelling unit.
- b. Evidence is not supported for two-family use of the amenities in the basement.
  - i. 2nd kitchens and/or separate baths exist as an amenity in single-family homes. And are not authorized as a rental unit and are not listed as a two-family.
  - ii. Ms. Regan has provided a notarized statement indicated a family member occupied the basement and that they continued to utilize the space for extra play and cooking space when needed.
  - iii. The appellant provided a statement from Mr. Cyr, a child of the owners during the time of the rebuild. Knowledge of his parent's relationship to any occupants and their contribution to the household expenses or rental arrangement is questionable without rental documents.
- 5. There is no record of any prior owner working to reconcile any claimed inaccuracy in the Town's records.
  - a. Inaccuracies relating to the assessment of the property were not rectified by the original owner or any subsequent owners.
  - b. Notification to the owners of and copied to the agent for the property in 2015, regarding a reported sales listing that included a rental unit, was not appealed as provided for.
    - i. A copy of the letter was filed in the Building Permit file.
    - ii. Due Diligence research by a potential buyers, including the current owner, would have discovered the letter.
  - c. Mr. Mitchell testified that he was unable to obtain a permit for separate utilities for a rental unit due to zoning. That determination was not appealed as provided for.
- 6. Any use of the property for with two separate dwelling units was kept from the Town and only challenged or appealed by this owner after he had knowledge that the use was not permitted, chose to rent the unit and the illegal use was discovered by the Town.



# ZONING ORDINANCE

*of the Town of*

## BERLIN, CONNECTICUT

*as adopted by the*

### ZONING COMMISSION

August 6, 1948 - Revised July 21, 1954



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 roof 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 housekeeping unit.

#### SECTION XXIII—CHANGES IN REGULATIONS

These regulations may from time to time be amended, changed or repealed as provided in Chapter 29 of the Public Acts, 1930 as amended.

#### SECTION XXIV—WHEN EFFECTIVE

These regulations shall take effect immediately.

#### ZONING COMMISSION,

Ralph Allen  
Bernard E. Cabelus  
Jack J. Ross  
Fred B. Garlick  
Donald A. Powers  
Burton A. Griffith

Dated at Berlin, Connecticut, this twenty-first day of July, 1954.

Town of Berlin  
Received

NOV 20 2020

Planning & Zoning Department  
Berlin, Connecticut

November 19, 2020

Maureen Giusti  
AICP Acting Town Planner  
Berlin Town Hall  
240 Kensington Road  
Berlin, CT 06037

Re: 1005 Kensington Road, Berlin, CT

Dear Ms. Giusti,

I am writing to you regarding the discussion we had about the above property.

Peter Regan and I owned the property at 1005 Kensington Road from 1991-2015.

When we moved in, the finished basement had all the attributes of a walk-out apartment.

The basement had a separate driveway (with no garage), a galley kitchen,  $\frac{3}{4}$  bath with washer/dryer hookups, a dining area with a working fireplace, a living room and one bedroom (with closets). It is quite possible that, at one time, the basement had two small bedrooms as there were closets on either side and it looked like there had been a dividing wall that had been removed. There were no windows in the bedroom. The kitchen had a stovetop and a wall oven which came in handy during large family gatherings.

We replaced the countertop in the basement kitchen and replaced the carpeting throughout the basement.

Peter's brother lived in the basement for approximately 8 years. He contributed to the household and utilities. There were no separate utilities, mailbox or address. When he moved out, our children used it as a playroom and eventually our eldest son, Terrance, moved down there.

We never opted to hook up to the town sewer as we had a septic tank on the property. I also informed you that there was a well on the property, but the well pump had been removed prior to us moving there. We were hooked up to the town water supply so it wasn't that important to us to replace the pump.

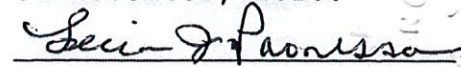
I believe that the upstairs: the big family room, mudroom, storage room and garage were added on at some point prior to us living there as the kitchen window (upstairs) looked out into the garage. Peter probably knows more about the history of the house as he grew up in Berlin and his family was acquainted with the Cyr family who owned the house before the Cobuzzis.

Sincerely,

Kim Regan  
860-543-3199



Subscribed and sworn to  
before me this 20th day  
of November, 2020.

  
Lecia J. Paonessa  
Notary Public

My Commission Expires Oct. 31, 2023