



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2015 SEP 27 P 3:30

CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-17

PETITION OF DAVID LEWIS

DATE OF DECISION: SEPTEMBER 13, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an Appeal filed by DAVID LEWIS (hereinafter the Appellant), for property located at 10 CAMPBELL ROAD. The Appellant filed a Petition to Overturn the Building Commissioner's decision that the house on his property is unlawfully operating as a lodging house (hereinafter the Petition).

2. Appellant & Property Owner

David Lewis
PO Box 440320
Somerville, MA 02144

3. Location

Property is located at 10 Campbell Road and is identified by Assessors' Parcel ID 141-83-5680-000 (hereinafter the Site).

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on SEPTEMBER 13, 2016 the Board voted 2-1 to UPHOLD the decision of the Building Commissioner. As a unanimous vote is required to overturn an administrative decision, the Petition is therefore DENIED. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
STEPHEN MELTZER	YES
SUSAN S. CRAIGHEAD	NO

5. Proceedings

The Petition was received by the Board on May 13, 2016 pursuant to M.G.L. Chapter 40A, §8, and the Framingham Zoning Bylaw. The Appellant, together with his attorney, Jeffrey Turk, presented the Petition to the Board at a duly noticed public hearing of the Board on June 21, 2016 at 7:00 PM in the Blumer Room of the Memorial Building. The Board voted to continue the case at 7:30 PM on July 12, and the Appellant consented to a site visit. On July 12, Ms. Craighead and Mr. Cosgrove were both absent. The Board did not deliberate or hear testimony at that time, and voted to continue the hearing at 7:00 PM on August 9. On August 9, the Board could not reach consensus, and the case was continued to September 13 at 7:00 PM. The Appellant consented to an extension of the decision deadline to September 30.

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Board Members Philip R. Ottaviani, Jr., Susan Craighead, Stephen Meltzer, and alternate Edward "Ted" Cosgrove were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official dated February 10, 2016 for a permit to install three bedroom closets in existing rooms in the basement, denied by the Building Commissioner on May 11, 2016.
- 6.2. Letter from the Deputy Building Commissioner dated March 7, 2016, relating to code compliance issues and the lodging house.
- 6.3. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on May 13, 2016.
- 6.4. Filing fee in the amount of \$300.00.
- 6.5. Extension of Decision Deadline signed by the Appellant and ZBA Chairman, agreeing to extend the decision deadline to September 30, 2016, filed with the Town Clerk on August 10, 2016.
- 6.6. Document entitled "Exhibit 1: Framingham Properties Owned by Applicant – David Lewis".
- 6.7. Copy of lease dated June 20, 2014 (expired but self-extending).
- 6.8. Color photographs of interior, provided by the Appellant, and stamped "Received" on June 21, 2016 by the ZBA Administrator.
- 6.9. Extract from the International Building Code describing various types of lodgings including boarding houses, stamped "Received" on September 13, 2016 by the ZBA Administrator.
- 6.10. Photo by the Framingham Fire Department depicting a fire at 2-4 Avon St., submitted by the Building Commissioner, stamped "Received" on September 13, 2016 by the ZBA Administrator.
- 6.11. Floor plan labeled "10 Campbell Rd, Framingham, Upper Floor", dated March 5, 2002, prepared by Chelsea Modular Homes, Inc., Marlboro, New York.
- 6.12. Floor plan entitled "1st Floor" (K-1), dated February 3, 2016, prepared by Daniel A. Martine-Ferreira, CF Engineering.

7. Findings and Conclusions

Based upon its review of the Petition, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the General Residence (G) Zoning District.
- 7.2 On May 13, 2016, Attorney Eduardo A. Gonzalez filed the Petition on behalf of the Appellant with the Town Clerk for the purpose of overturning the May 11, 2016 decision of the Building Commissioner that the structure is arranged as a lodging house, which is not an allowed use per §II.B.1 of the Zoning Bylaw.

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- 7.3 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on June 6 and June 13, 2016 and mailed to all parties-in-interest, as defined by M.G.L. c. 40A, §11.
- 7.4 The Board members conducted an arranged site visit to view the interior of the property, which took place on July 12, 2016.
- 7.5 Section 1.E of the Framingham Zoning Bylaw defines a Boarding or Lodging House as follows: "A dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the licensee, owner or operator to four or more persons not within the second degree of kindred to the person compensated. A Boarding or Lodging House shall not include inns, bed and breakfasts, dormitories, fraternity houses, or similar places; or convalescent, nursing, or rest homes or group residences licensed or regulated by agencies of the Commonwealth."
- 7.6 There are seven inhabitants of the house at 10 Campbell Road, none of whom are within the second degree of kindred to each other. This fact was not disputed by the Appellant.
- 7.7 Members of the Board considered the Appellant's claim that the *City of Worcester vs. College Hill Properties* decision of the Massachusetts Supreme Judicial Court (SJC) in effect invalidates the Town's definition of a lodging house. The SJC case discusses the legal distinction between a lodging house and an apartment with an equivalent number of inhabitants. Attorney Jeffrey Turk argued that the Town's Bylaw did not define "rooming units", but that the State's definition of a rooming unit was different than a dwelling unit, and he submitted photographs as evidence that the house did not contain rooming units within the State's definition, since there were no locks on the doors; boarders or lodgers would only have access to a specific room or group of rooms, but do not have rights to the rest of the property.
- 7.8 Mr. Michael Tusino, the Building Commissioner, was present at the September 13 meeting and argued that the circumstances in the *Worcester vs. College Hill* decision are different than the present case. He defended the Town's definition of a lodging house, stating that the *Worcester* decision did not speak to the differences in the building code between a single-family home with related inhabitants, and a home in which rooms are let. He also argued that in a family situation, there is usually a caretaker adult, and occupants have full access to the property; in a rooming house, occupants only use their respective rooms, and people do not cook together, which is the case here.
- 7.9 Mr. Ottaviani explained his hesitance to overturn the Building Commissioner, stating that the house was in good condition; that a number of occupants were not on the original expired lease, their names being added over time; and that with a significant university population in Town, he was hesitant to agree that large numbers of unrelated people should be allowed to share dwellings.
- 7.10 Ms. Craighead said she did not see the difference between a situation where occupants are related or unrelated. She argued that in non-traditional living situations, such as those involving unrelated unmarried adults, of whichever sexual orientation, people may act as a family but Framingham would consider their situation as a lodging house. Alternatively, there could be several blood-related adults living in the same house who do not act as a family unit, sharing the entire premises or cooking meals together. She

also questioned the definition of a “rooming unit” as stated in the Bylaw’s definition, and suggested that a group of bedrooms might constitute a rooming unit.

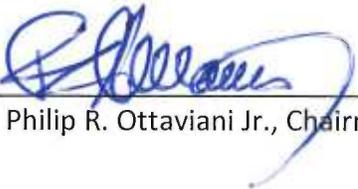
7.11 Mr. Meltzer felt that the Board’s job was to interpret the Bylaw, and not to agree or disagree with the *Worcester* decision of the SJC. He agreed with the Building Commissioner’s interpretation and intent to enforce the Bylaw.

7.12 Mr. Meltzer made the motion to UPHOLD the Building Commissioner's determination; seconded by Mr. Ottaviani. Ms. Craighead voted against resulting in a final vote of 2-1. Since a vote to overturn the Building Commissioner must be unanimous, the Appeal is therefore DENIED and the Building Commissioner is UPHELD.

8. Appeals

Appeals, if any, shall be made pursuant to M.G.L. c. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: 
Philip R. Ottaviani Jr., Chairman