



CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#03-19

2019 JUL 17 AM 9:57

Detailed Record of Proceeding and Decision

Petition #03-19 Traolach Cahillane (the "Appellant") 35-37 William Street, Newton, Massachusetts, pursuant to G.L. c. 40A, §§ 8 and 15, appealing the March 8, 2019 Notice of Violation issued by the Commissioner of Inspectional Services for violation of Sections 5.3 and 8.3 of the Newton Zoning Ordinance governing stormwater management and usable open space and for violation of Section R105 of the State Building Code, 780 CMR 51.00, governing building permits. The Appellant contended that the violation order and decision of the Commissioner of Inspectional Services was improperly issued. The subject property consists of a 3,040 square foot lot and is located in a Multi-Residence 2 District.

The Zoning Board of Appeals held a public hearing on the above-entitled proceeding on Wednesday, May 22, 2019 at 7:00 p.m., in Room 211 at City Hall, Newton, Massachusetts.

The following members of the Board were present:

Brooke Lipsitt (Chair)

Stuart Snyder

Barbara Huggins Carboni

Michael Rossi

Michael Quinn

The petition was filed on April 3, 2019.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton TAB, a newspaper of general circulation in Newton, Massachusetts, on May 8, 2019 and May 15, 2019.

Submitted in support of the Appeal were the following documents:

1. Appeal of Decision of the Commissioner with accompanying documents, received April 3, 2019
2. Supplemental documentation from appellant to the Zoning Board of Appeals, received April 10, 2019

BACKGROUND

On March 8, 2019, a Zoning Violation was issued to Traolach Cahillane of 40 Presentation Road, Brighton, Massachusetts in reference to property located at 35-37 William Street, Newton.

According to an inspection conducted at the subject property on February 12, 2019, violations were observed by the Inspectional Services Department, including construction of a driveway without a building permit as well as violations of provisions concerning usable open space and stormwater management.

THE PUBLIC HEARING

At the public hearing, a set of photographs, a Commissioner's bulletin dated May 16, 2011 regarding paving driveways, section 8.3 and section 5.3 of the Newton Zoning Ordinance and building jacket information were submitted by Commissioner of Inspectional Services John Lojek. In addition, a set of photographs was submitted on the night of the hearing by Appellant's representative, Mr. Tavis Babbitt of 60 Breed Street, Unit 5, Lynn, Massachusetts.

Mr. Babbitt gave an overview of the appeal to the Board. He explained that the entire property was previously paved and in poor condition with the exception of a tree, which was also in poor condition. Therefore, both the driveway and tree were removed. Mr. Babbitt noted that the Appellant installed new pavers and a 250-gallon drywell in the back area of the property. The

Appellant's intention was to replace an already impervious area and render the space usable for the residents.

Board member Michael Quinn asked if the Appellant had hired a professional engineer and if the grade of the property had been changed. Mr. Babbitt said 'no' and explained that the Appellant added the drywell to relieve potential flooding problems.

Chairman Lipsitt asked whether the Appellant concedes that he should have obtained the proper permit. Mr. Babbitt saw no reason why the Appellant should not have applied for a permit.

Commissioner of Inspectional Services Department John Lojek explained to the Board that the violation notice and violations are clear. A decrease in open space to less than 50% would require relief, which was not sought. Prior to issuing the violation notice, Alan Gifford, City of Newton Building Inspector, had just closed out the subject property's building permit. Subsequently, when driving down William Street, Mr. Gifford was held up due to a traffic jam caused by paving trucks. The Commissioner explained that if pavers are used for parking, then it counts against open space. Referring to the photos provided, Commissioner Lojek noted that the Google Maps photos show that there was previously grass and a lawn chair in the backyard of the subject property.

Commissioner Lojek further noted that in an owner-occupied home, a tree permit is not necessary. But the subject property is not owner-occupied, and the Appellant needed to get a tree permit before removing the tree.

Commissioner Lojek also stated that the Appellant put in a drainage system, but it has not been approved as it has never been inspected. Commissioner Lojek explained that these changes have to be calculated by professional engineers and inspected, but none of this was done.

Karen Waller of Natick testified that she has owned the abutting property, 31-33 William Street, Watertown, for approximately 15 years. She stated that the property had been so overgrown that it was not clear whether it was paved or not. Ms. Waller asked what her course of action in light of this appeal should be, as it is holding up renovations she wishes to make on her own property.

Chairman Lipsitt noted that the Board cannot answer Ms. Waller's question on how to move forward with her renovations but can develop a way forward for the appellant.

Michael Rossi asked Ms. Waller whether she is ever present at the property, as she does not reside there. Ms. Waller explained that she attends to the property every couple of weeks.

Amy Beckler, 48 Jefferson Street, explained that there is more water in her basement this year than in prior years, and it comes from the runoff from the William Street side of Jefferson Street.

Beverly Reid, 44 Jefferson Street, expressed that she is neither in favor nor in opposition to the appeal, but that she wanted to know more about the issue.

The Appellant's project manager for the project, Bernard Newhouse, 210 Palfrey Street, Watertown, also spoke. He noted that he worked on the project and was there most of the time. The property's asphalt was cracked, the plants were overgrown and the property "was a mess." Mr. Newhouse noted that the owner got a permit for the work inside of the house on the subject property, which Mr. Newhouse carried out.

A motion to close the public hearing was moved by Michael Quinn. The motion was duly seconded by Barbara Huggins Carboni. The motion passed five in favor and none opposed.

Chairman Brooke Lipsitt noted that, as there appeared to be no argument on the Appellant's behalf that he was not obligated to get a permit, she would accept a motion.

FINDINGS AND DETERMINATION

A motion was made by Mr. Quinn to deny the appeal and uphold the Commissioner of Inspectional Services' issuance of the violation notice. This motion was duly seconded by Mr. Rossi and passed five in favor, zero opposed.

Accordingly, the Board makes the following findings:

1. The Appellant admits that he removed the existing driveway and a tree from the subject property and installed pavers and a 250-gallon drywell without obtaining a permit.
2. The Appellant was issued a notice of violation for construction of a driveway without a permit and violation of usable open space and stormwater management provisions of the zoning ordinance.
3. Based on the findings above and in the absence of evidence to counter the assertion that the Appellant should have obtained a permit and necessary approvals, the issuance of the Notice of Violation was proper, and the appeal must be denied.

Brooke K. Lipsitt

 Brooke K. Lipsitt, Chairman

AYES: Brooke Lipsitt (Chair)
 Barbara Huggins Carboni
 Michael Rossi
 Stuart Snyder
 Michael Quinn

NAYS: NONE

Copies of this decision and all plans referenced in this decision have been filed with the Planning and Development Department, the ZBA and the City Clerk.

The decision was filed with the City Clerk on _____.

The City Clerk certified that all statutory requirements have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A or Section 21 of Chapter 40B has been filed.

 David A. Olson, City Clerk