



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
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## ZONING BOARD OF APPEALS

Heather Zaring, Interim Board Clerk

#02-22

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### DETAILED RECORD OF PROCEEDING AND DECISION

**Petition #02-22** Tarun and Anuradha Bhalla of 943 Boylston Street, Newton, Massachusetts, pursuant to M.G.L. c. 40A, §§8 and 15, appealing the December 14, 2021 Notice of Violation issued by the Commissioner of Inspectional Services for operating an illegal lodging house in violation of Section 3.4.1 and 6.2.7.B of the Newton Zoning Ordinance at 64 Brooks Avenue, Newton, Massachusetts. The subject property is located at 64 Brooks Avenue within a Multi-Residence 1 (MR-1) zoning district and consists of 6,336 square foot lot.

The Zoning Board of Appeals for the City of Newton (the "Board") held a duly noticed, virtual public hearing via Zoom on Wednesday, February 23, 2022 at 7:00 p.m.

Due notice of the public hearing was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in the *Newton Tab*, a newspaper of general circulation in Newton, Massachusetts, on February 9, 2022 and February 16, 2022.

The following members of the Board were present:

Brooke K. Lipsitt (Chair)  
Stuart Snyder  
Treff LaFleche  
William McLaughlin  
Denise Chicoine

The following documents were submitted to the Board and/or entered into the record at the public hearing: 64 Brooks Avenue Appeal Application received January 13, 2022; Testimonials for 64 Brooks Avenue received January 14, 2022; and Materials from Inspectional Services Zoning Code Enforcement Agent regarding 64 Brooks Avenue received February 14, 2022.

### THE PUBLIC HEARING

#### Presentation of the Appellants

Attorney Daniel Skrip, Tempus Fugit Law LLC, 185 Devonshire Street, Boston, represented the property owners. He provided some background regarding when the subject property was purchased and how his clients believed that the property could be used by renters on a month-to-month basis based on their interpretation of information on the City of Newton's website. The property owners hoped to avoid the lodging house procedure and the special permit process for operating a lodging

house within the City. They believed eight (8) unrelated people could rent the two-family home based on their understanding of Section 6.2.7.B of the Newton Zoning Ordinance. Attorney Skrip stated that, in reviewing the Zoning Ordinance with his clients, he found discrepancies between the City's website and the ordinance. He concluded his comments by stating that his clients are before the Board to try and remedy the situation. He requested that the Board find that the property is not an illegal lodging house and rescind the fines, or at least rescind the fines and give the property owners until the end of the month to have the renters vacate the property.

Chair Lipsitt inquired if Attorney Skrip's clients were prepared to file for a special permit if the Board deemed that a special permit was the appropriate action to take to resolve the matter.

Attorney Skrip stated that the option of a special permit is on the table, but he could not provide that answer without conferring with his clients and assessing the situation after the outcome of the hearing.

Chair Lipsitt remarked that comments on the City's website are superseded by the City's ordinances and Attorney Skrip should be aware of that.

### **Presentation of the Inspectional Services Department**

Andrew Mavrelis, Zoning Code Enforcement Agent, Inspectional Services Department, stated that he issued the Notice of Violation that is the subject of the appeal. Mr. Mavrelis provided some background. He issued the violation notice stating that the subject property was being operated as a lodging house after investigating a complaint filed on November 24, 2021.

He described numerous advertisements found online after the initial zoning enforcement request was made, which revealed that the property had eight (8) rooms to rent. Mr. Mavrelis noted that those rooms were identical to the rooms captured in photographs that he took when he conducted a site inspection on December 13, 2021. Mr. Mavrelis further explained that the notice of violation was issued when it became clear the rooms were being rented as individual rooms. He also pointed out how the advertisements mentioned all the amenities available, including keyless access to every bedroom and even the foyer to get into both units and a cleaning service along with how discounts were available if a person booked a stay longer than a month. These details further supported his initial observations that the rooms were for rent and the property was operating as a lodging house.

Mr. Mavrelis also described the site inspection, which he carried out in the presence of the property owner. According to Mr. Mavrelis, the property owner stated that the rooms were not being used for short term rentals but for "medium term rentals" of more than 30 days. The property owners provided a copy of a lease agreement to Mr. Mavrelis, which showed a month-to-month tenancy with a 30-day notice. Mr. Mavrelis also described information he found, which revealed that the home was for sale in April 2021. At that time, the listing for the home described a two-family with

a two-bedroom, one-bathroom unit on the first floor, and a four-bedroom, two-bathroom unit located on the second and third floors. Mr. Mavrelis indicated that listing stood in stark contrast to his observations of the home's current state. Mr. Mavrelis noted some of the living spaces were converted into bedrooms. He also observed none of the bedrooms had personal effects in them and rather were all oriented and decorated similarly, as in a hotel. Mr. Mavrelis concluded by stating that all the people he spoke to at the property during his site inspection stated that they were renting a room and were not part of the housekeeping unit. This rendered them lodgers and led to the notice of violation being issued to the property owner.

Mr. McLaughlin inquired about how many rooms had more than one (1) bed/occupant. Mr. Mavrelis replied that out of all the rooms he was able to inspect, as one room was locked and could not be accessed during his site inspection, that only one (1) room had two (2) beds in it.

Ms. Chicoine inquired if all the bedrooms had a second means of egress or if there was a safety issue that the Board needed to be concerned about. Mr. Mavrelis stated that yes, emergency egress was a concern and something to be considered. He explained that most of the bedrooms had appropriate means of egress, but a review of the original building plans shows that some of the rooms were illegally converted into bedrooms without permits, appropriate emergency egress, or smoke detectors as required by code.

Mr. LaFleche asked if all the rooms had keypad access. Mr. Mavrelis stated that every room except the kitchen and dining space had keypads, and that the kitchen and dining space did not have doors at all.

Mr. LaFleche inquired whether Mr. Mavrelis had requested a written rental history from the owners and how long has the current property owners owned the subject property. Mr. Mavrelis responded that he did not but did have a rental history from the past month or two that was provided by the property owners. They have owned the property for around six months.

### **Public Comment**

Christopher Coy, 54 Brooks Avenue, stated that he lives two houses down from the subject property. Numerous renters staying at the property have come to his home asking if they can park in front of his home. Mr. Coy would inquire as to why they would want to do that and discovered that they were staying at the "Airbnb" at 64 Brooks Avenue. He has heard similar stories from some of his other neighbors and observed trash piling up at the property from the renters. Mr. Coy also remarked on how numerous calls to the Police and Fire Departments have been made in response to situations at the subject property, some as recent as the week prior, due to the actions of some of the renters. He concluded his comments by stating that the home is clearly being used as a lodging house and that he is sure the appropriate decision will be made by the Board. He also stated that the property may need some sort of monitoring to ensure the property owners comply.

Peter and Mary Lewitt, 41 Brooks Avenue, echoed Mr. Coy's remarks. Mr. Lewitt stated he and his wife have seen as many as 16 people at one time at the subject property. He explained there has been no management of the property for numerous months and the neighbors have had to deal with the less than ideal situation that the property owners have made. Mr. Lewitt ended his remarks by stating that the neighbors are law-abiding and are offended by the property owners trying to sidestep the rules of the city and not getting a special permit for the illegal lodging house that has been affecting their neighborhood.

Attorney Skrip then requested an opportunity to respond. He maintained that the notion that his clients tried to sidestep the ordinances was not true. He reiterated that his clients were trying to work with the City to remedy the situation. Attorney Skrip also acknowledged the binding nature of the City's ordinances versus the advisory nature of information on the City's website, but wanted to illustrate his clients' thoughts at the time they purchased the property and explain the misunderstanding. Moreover, Attorney Skrip asserted that having locks on doors and having a cleaning service is irrelevant and does not define a "dwelling." He stated that his clients do not dispute the advertisements themselves but submitted that, depending on how one interprets the zoning ordinance, the advertisements are appropriate. Mr. Skrip concluded by noting that the bedroom on the third floor is no longer being rented.

### Discussion

A motion was made by Stuart Snyder to close the public hearing. The motion was duly seconded by Treff LaFleche. The motion passed 5-0 to close the public hearing

Chair Lipsitt remarked that there is not a great deal at dispute and noted that the issue of whether the Board interprets information on the City website versus the zoning ordinance has been straightened out. She also observed that the rental history from the property owners for the previous month provided in Mr. Mavrelis' narrative clearly shows that ten bedrooms were available to be rented out, which is not allowed.

Mr. Snyder inquired if it is within the Board's role to advise the property owners on what to do next, as it was his understanding that the Board's role is purely to either vote to uphold or overturn the decision of Inspectional Services.

Chair Lipsitt commended Mr. Snyder for describing the Board's role perfectly and added that it is the Board's place to have a discussion with Inspectional Services if the Board upholds their decision on whether to possibly withhold penalties for a certain period while a special permit might be filed.

Mr. LaFleche asked if the property owner or the property manager lived at the subject property and if it was clear in definition of a lodging house that three unrelated renters can live there, whether or not the dwelling is owner occupied.

Mr. Skrip stated that neither the property owner nor the property manager live at the subject property.

Attorney Zawada referred the Board to the definition of a lodging house, which describes any dwelling that is designed, occupied, or intended for occupancy by four or more lodgers. She also referred the Board to the definition of a lodger, which is a person who occupies a space for living and sleeping without separate cooking facilities, paying rent, which may include an allowance for meals, and is not a member of the housekeeping unit.

Mr. LaFleche asked for further clarification on what a member of the housekeeping unit truly was.

Attorney Zawada stated that in this case that there has been evidence provided by Mr. Mavrelis proving that housekeeping is done by people who do not reside at the subject property.

Chair Lipsitt added to the discussion by explaining her understanding of the ordinance, which is that a dwelling can have no more than three unrelated people in addition to the property owner if it is owner occupied, but it can only have three unrelated people residing there in total if the dwelling is not owner occupied.

Mr. Mavrelis agreed with Chair Lipsitt's understanding of the ordinance and remarked that, if the property owner lives at the property, renting rooms to up to three people is allowed by right as an accessory use.

Mr. LaFleche commented that he was trying to determine if four people could be allowed to reside at the dwelling if one of them was a member of the housekeeping unit or if it was only allowed if the fourth person was the property owner as he has heard the ordinance interpreted in different ways over the years.

Mr. Mavrelis provided a more detailed explanation of his interpretation of the ordinance via an example situation that there is a difference between renting a dwelling and renting dwelling units. A dwelling is the home as a whole and if it is rented to a group of four unrelated people, they would be considered roommates as everyone would share the housekeeping responsibilities, would choose between themselves who got which room, and there would not be locks on individual doors unlike renting rooms where each room is used as a separate dwelling unit and there is no shared responsibility for housekeeping.

Mr. McLaughlin added that the renters of a dwelling would be coterminous, as the leases would start and end at the same time unlike renters of a dwelling unit, who have varying tenancy lengths as is clearly the case with the subject property. He concluded that the renters have no correlation to each other and are not roommates in terms of the definition.

### DETERMINATION AND FINDINGS

A motion was made by Stuart Snyder to uphold Inspectional Services' Notice of Violation. The motion was duly seconded by Denise Chicoine.

Chair Lipsitt posed a question to Attorney Skrip regarding whether his clients were willing to pursue a special permit if the Board voted against his client's appeal.

Mr. Skrip stated that it is a possibility, but he would need to confer with his clients after the Board votes as that will influence what steps they would take after the hearing.

Chair Lipsitt remarked that, if Mr. Skrip agreed to file for a special permit, she would on behalf of the Board ask Mr. Mavrelis to hold off on imposing any fines for a finite period of time until his clients file for a special permit. But if his clients were not willing to file a special permit, the Chair indicated she would leave it to the parties to negotiate amongst themselves, which is the impression she had received from his previous comment.

Mr. Snyder interjected that he does not support holding off on imposing fines to try and get the petitioner to file for a special permit. He further explained that there is a reason why the ordinance is written in the way that it is and that he does not support the idea of giving someone a pass simply because they say they will try and get it right the second time.

Mr. Mavrelis asked that the Board uphold the notice of violation and that the Board supports the proposed remediation, which is stated in the ordinance and that the operation of a lodging house ceases and desists immediately.

Mr. McLaughlin commented that he would be open to delaying any fines provided that the property owners cease and desist. But he also explained that he does not want the property owners to say they will submit for a special permit, which can take some time, and continue to operate the dwelling as a lodging house.

Mr. Mavrelis also stated that there are safety concerns when operating a lodging house, as certain inspections, registrations, and licensing steps must be carried out and the building code and ordinance must be adhered to. He explained it is therefore imperative that the operation of the lodging house at the subject property cease immediately. He also noted that if the property owners had initially ceased and desisted when the violation notice was issued, they would not be before the Board asking for an appeal or be concerned over the fines.

Mr. Snyder interjected that the other reason that the fining the property owners while the violations continue is important is that the abutting neighbors have a certain expectation that zoning applies to everyone and those who do not adhere to zoning should be penalized.

The motion then passed 5-0 to uphold Inspectional Services Notice of Violation.

Accordingly, the Board made the following findings:

1. The Board finds that the subject property, 64 Brooks Avenue, is located in a Multi-Residence 1 (MR-1) zoning district.
2. The Board finds that, per Newton Zoning Ordinance Section 6.2.7, a lodging house is any dwelling designed, occupied, or intended for occupancy by 4 or more lodgers. A lodger is a person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which made include an allowance for meals; and who is not a member of the housekeeping unit.
3. The Board finds that, per Newton Zoning Ordinance Section 3.4.1, a special permit from the Newton City Council is required of a lodging house located in a MR-1 zoning district.
4. The Board finds, based on all the facts presented and the documents in the public record, that the subject property, as described by Appellants' counsel, the Zoning Enforcement Agent, and other witnesses, was operated as a lodging house without the requisite special permit in violation of Section 3.4.1 and 6.2.7.B of the Newton Zoning Ordinance.

AYES:       Brooke K. Lipsitt  
               Stuart Snyder  
               Treff LaFleche  
               William McLaughlin  
               Denise Chicoine

  
 Brooke K. Lipsitt, Chairperson

The City Clerk hereby certifies 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 of Chapter 40A has been filed.

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 Carol Moore, City Clerk