

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**October 24, 2017**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, October 24, 2017, in the Auditorium of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Acting Chair, Barbara Rando, and members Glenna Gelineau, Sarah Hankins, Mark Hickernell and John Sergi.**

**Mrs. Rando: Tonight we have two cases before us: Case No. 2017-29, RCG Brown & Moody, LLC, 83-85 Brown Street and that's for an appeal of the building inspector; Case No. 2017-31, Haiyun Guo, 101-103 Alder Street and that's also for an appeal of the building inspector.**

**Mrs. Rando: The first action this evening is for a motion to accept the minutes of October 17, 2017.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to approve the minutes of October 17, 2017.**

**Mrs. Rando: Will the clerk please read the Petition in Case No. 2017-29, RCG Brown and Moody, LLC.**

**The clerk then read the Petition of RCG Brown and Moody, LLC, in an appeal of Determination by Inspector of Buildings. Subject Matter: Petition to overturn the decision of the Inspector of Buildings made under Article VII, Section 7.42 to allow for continual use**

**of a four unit Residential building. Location and Zoning District: 83-85 Brown Street; Residence B Zoning District.**

**Mrs. Rando: May we hear from the petitioner or the petitioners representative, please.**

**Bret Francis Esquire, Scafidi and Juliano, 10 Hammer Street, Waltham MA, came forward.**

**Mr. Francis: I am here tonight on behalf of the Petitioners, RCG Brown and Moody, LLC and representing them today are Principal, Obadiah Arthur and and Daniel Borell as well. They are here to answer any questions you may have, if you do have any questions.**

**Mr. Francis read his brief into the record and went over the exhibits attached to his brief with the board.**

**Mrs. Rando: Mr. Sergi, do you have any questions?**

**Mr. Sergi: In one of the pictures, it looked like there were five meters.**

**Mr. Francis: That would be for the common area, four units, common area and that's in the memorandum.**

**Mr. Sergi: Okay. There is no fifth unit.**

**Mr. Francis: No.**

**Mr. Sergi: And when did they purchase this property?**

**Mr. Francis:** December of 16.

**Mr. Sergi:** And it was marketed as a four family?

**Mr. Francis:** It was. He had four family tenants. My client can speak to that if you wanted him to. He would know more about what happened prior to the purchase. But, yes, it was advertised as such and again they didn't rely on that. They went to the building department. Exhibit 2, it's a legal four family. I don't know what else you could do. If they were told it was a two family he might not buy it. But they were told it was a legal four family. They relied upon that and purchased the property only to find out when he goes to do a renovation, again a very minor renovation to one unit's kitchen, that he was told, no, you do not have a four family. I mean here we are tonight to rectify it.

**Mrs. Rando:** Mr. Hickernell?

**Mr. Hickernell:** No questions at this time. Thank you.

**Mrs. Rando:** Couldn't the five meters, couldn't one have been illegal?

**Mr. Francis:** No. It's for a common area, expenses paid for by a condo trust. I imagine that was set up prior to this purchase.

**Mrs. Rando:** It also could have been they have five apartments.

**Mr. Francis:** It's the electrical meter. So I imagine it's rigged to the outdoor lights, the front door light and any hallway light. So it's not a fifth meter that goes to another unit. You can clearly see that four units and one is for the common area, hallways, front door light backyard lights, etc.

**Mrs. Rando: You said on page 3, "In response to the Petitioner's follow-up email, the building department responded that 84-85 Brown Street was a legal four family."**

**How did they respond?**

**Mr. Francis: It's right there in Exhibit 2.**

**Mrs. Rando: Who's Matt?**

**Mr. Francis: Matt is one of the workers for RCG Brown and Moody. He's not here tonight but he is an employee of theirs and that's part of the email. I have a little bit more of it in my file. I would be happy to show you but you can see where Matt is asking - - -**

**Mrs. Rando: Are you talking about Exhibit 2?**

**Mr. Francis: Yes.**

**Mrs. Rando: But I don't see where the building inspector said that it was a - - -**

**Mr. Francis: John Jennings is an employee of the building department. All I have indicated was that the building department said that this is a legal four family. And one is to presume that employees of the building department are operating under the control and direction of the building inspector.**

**Mrs. Rando: Ms. Gelineau, do you have any questions at this time?**

**Ms. Gelineau: How long did the previous owners own it?**

**Mr. Obadiah Arthur, Owner:** Several years. I think he owned it for more than twenty years.

**Ms. Gelineau:** And so, there's no building card on record? That's the story. There's no building permit on file?

**Mr. Arthur:** It was not available on the website.

**Mr. Francis:** There was some permit pulled in 1933. I only have one but I am happy to give it to you.

**Ms. Gelineau:** And also I can't see very well, the voting records. I can't see it that well. Can you just show me where it says that more than that many people lived there?

(Mr. Francis went before the board to go over the voting record with the board.)

**Mr. Arthur:** So the voting records, of course, are for people over the age of eighteen. So if you look at how many people have been living there at the time, I believe that there was some suggestion that there might be a family there so I think there was enough people over eighteen and there might have also been some children in there.

**Ms. Gelineau:** Attorney Francis, is it my understanding which is not clarified on the building card what it is that it is what it is when they go to, I mean - -

**Mr. Arthur:** This house pre-existed.

**Ms. Gelineau:** Well, that's what I mean. So it was not on here. So if you went to look at today any information to the contrary, it is what it is. The building department determines if it's not referenced on the building card and there's no evidence to the

contrary which I don't seem to see any that it is what it is supersedes the building card because there's nothing on it.

Mr. Francis: This shows that it wasn't in his department so he did not feel comfortable making that call.

Ms. Gelineau: So lack of that confirmation now has always been it is what it is then. Okay. Thank you.

Mrs. Rando: Ms. Hankins?

Ms. Hankins: Back to the email from Mr. Jennings. Did you bring up this email to Inspector Forte?

Mr. Francis: I was not involved until they - - - They were at one point told in June that you're going to be denied but we will see what we can do, come to the property, see if you could provide more records so there was a clear indication that they were going to be getting denied. I wasn't brought on until after July, I would say, after they met at the property. So he could answer what was discussed at the June 29th meeting.

Ms. Hankins: I just, the only question I have is really where they got this, it looks like they cut and pasted it somewhere. The implication from the building inspector is that the building department didn't have any records and, therefore, they so on and so forth.

Well, I'm just curious where this came from.

Mr. Francis: I don't know how they got it because there is no record so I have to presume he went out to the property, and saw the units.

**Ms. Hankins:** But the email lists off looks like you cut and paste.

**Mr. Arthur:** I can respond to that. Prior to the purchase, of course we did due diligence to insure that it was a four family and probably that was working with the assessors records which indicated it was a four and the other part was working with the building department to get their feedback. So we purchased six buildings in that acquisition so there were a number of them that we verified different unit counts. So it might have been cut and paste from that larger unit because it wasn't relevant but it was part of it because we were verifying the legality of six buildings.

**Ms. Hankins:** The fact that, even if this sort of was not the original work, it would have been done whenever that permit was issued theoretically, worse case scenario type thing.

So did you bring up at all the fact that this was just, you know, it's been clearly more than ten years, so, it doesn't really matter.

**Mr. Francis:** No, I don't think the statute works in this case because it's a use. Use is not protected by a ten year statute limitation. In this circumstance, there was no building permit, so on and so forth, don't believe 40A applies.

**Ms. Hankins:** Another question, in terms of the work that you were hoping to be done, you didn't get into too much detail, which is fine, but was it adding a kitchen. Or was it anything that would sort of spark a new unit type thing?

**Mr. Arthur:** If you look at the plan, pretty simple. There's a very small kitchen that didn't have a place to put the refrigerator so essentially we wanted to open up a wall so we can extend the kitchen to move the refrigerator to create for an egress path. So we are really trying to abide by the building code. We are trying to do it safe and properly.

**That's why we applied for the permit and we were rejected for this reason. That's really the extent of the renovation.**

**Mr. Arthur and Mr. Francis went before the board to go over the minor renovation.**

**Mrs. Rando: Are there any other questions?**

**Mr. Sergi: What was the purchase price when you bought it?**

**Mr. Arthur: I want to say five per eight million for the six properties. This was one of many that we were trying to verify. So, yes, it was part of a big acquisition.**

**Mr. Sergi: If we stick with this property, there was two one bedrooms and two-two bedrooms. Is that what it was?**

**Mr. Arthur: One bedroom on the first floor and the second floor 2/3 bedrooms, however you want to interpret it**

**Mr. Sergi: When you purchase the whole group together, how many units did you purchase?**

**Mr. Arthur: It ended up being twenty-six units.**

**Mrs. Rando: Are there any other questions?**

**Mrs. Rando: What I consider important is that the building inspector said that he didn't see any reason to believe that the property was illegally converted to a four family. It didn't look like you did anything purposely to make four families out of it.**



**Mr. Arthur: That's right. We haven't touched it ourselves. His opinion and I was on site with him when we had the discussion we walked through the building and his opinion was that it was constructed that way originally.**

**Mr. Sergi: So you paid about \$233,000 a unit.**

**Mr. Arthur: We invested a lot in this city.**

**Mrs. Rando: Is there anyone in the audience in favor of this petition?**

**(Four people raised their hands in favor.)**

**Mrs. Rando: Is there anyone in opposition? Seeing none, is there anyone seeking information? Seeing none.**

**All right, the public hearing is closed. You may continue with your Proposed Findings of Fact.**

**Mr. Sergi: Counsellor, are these the same Findings of Fact that you submitted?**

**Mr. Francis: They are. They haven't changed.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Findings of Fact.**

**Do I have a motion to waive the reading of the Proposed Decision or do you want him to read the decision?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the reading of the Proposed Decision.**

**Mrs. Rando: All right, I am ready to entertain a motion on the Proposed Findings of Fact.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Proposed Decision.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted that the Proposed Decision becomes the Board's decision.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Will the clerk please read the Petition in Case No. 2017-31?**

**The clerk then read the Petition of Haiyun Guo in an appeal of determination by Inspector of Buildings. Subject Matter: Pursuant to GL c40A, Sections 8 and 15, Petitioner is appealing the Inspector of Buildings decision to deny a four family occupancy permit. Petitioner believes denial is in error and that the property is a protected legally nonconforming four family. Location and Zoning District: 101-103 Alder Street, Residence B Zoning District.**

**Mrs. Rando:** May we hear from the Petitioner or the Petitioner's representative please?

**Ranen S. Schechner, Esquire, 10 Cedar Street, Suite 26, Woburn, MA.** came forward. He submitted a copy of his brief along with exhibits referring to the case to each member of the board.

**Mr. Schechner:** I am counsel to Haiyun Guo who is the owner of 101-103 Alder Street. We are here appealing the decision of the building inspector to deny a use occupancy permit for a four family use. Some of this is similar to the matter that was just before the board.

**(Mr. Schechner read his brief into the record.)**

**Mrs. Rando:** Could you explain to me that why in 14 that the building inspector told her she had to go back to a two family at that time. Did they do something illegal?

**Mr. Schechner:** No. Nothing was done illegally. She was living in 13, she wasn't living in 14 but she had an interaction with the tenant who as far as I understand it, a tree fell on the tenant's car and broke the window. The car from what I understand was parked on the street and then apparently he demanded that my client pay for it and she declined to pay for it. It was not her responsibility to pay for damage from the tree that fell. And then he sued her and went to the building department, I think originally complaining. I don't know the whole story.

**Ms. Guo:** Tree fell from Hurricane Katrina on the car and the tree wound up on my driveway, not that the tree fell, but there's a branch that fell down. His mirror was hit. And he want me to pay for it and the insurance company said that we don't have any responsibility but he still want me to pay for it and I start evicting and he starts going

through the Board of Housing, the Building Department to find anything at fault with me and I found out and he wants occupancy permit for this building and the building department said it's not a a four family so at that time the building department asked me not to use it as four family. So since then, two units are vacant.

Ms. Gelineau: Why did they say it's not a four family?

Ms. Guo: Because they said we don't have the permit showed that it had been a four family.

Ms. Gelineau: Probably that's not available.

Mr. Schechner: I have had multiple discussions with the Inspector Forte attempting to convince him that what's here is not a problem but he says that the evidence doesn't support it; the records don't support it and he refused to permit it.

Mrs. Rando: But I don't understand. Why would he just tell her she had to have a two family for just three months?

Mr. Schechner: I don't understand that either. Are you talking about the violation where it says move out for three months? I don't understand that either. It's been our understanding that the inspector's position that essentially use and occupancy beyond two families is not permitted.

Ms. Gelineau: Well it is if it's nonconforming.

Mr. Schechner: Well he did not believes that we provided sufficient evidence to show that it was nonconforming.

**Mrs. Rando: Are you sure that it's not because you put in a kitchen and a bathroom with no permit?**

**Mr. Schechner: My client?**

**Mrs. Rando: Yes.**

**Mr. Schechner: No my client has done nothing. Ive been in there. Whatever is in there - - -**

**Mrs. Rando: Could you explain Example E and Exhibit E.**

**Mr. Schechner: This is the building inspector's um - - -**

**Mrs. Rando: And it says: With no permits, kitchen, bath.**

**Mr. Schechner: I don't know how the building inspector knows what was previously installed in there. The building inspector made a determination that this is a two family property and that the four family use is not permitted.**

**Mrs. Rando: I don't understand.**

**Mr. Schechner: I believe that the building inspector believes that it was not a permitted four family because the permits don't show it as a four family. He believes that it was a two family originally and that the work to convert it to a four family was unlawful.**

**Ms. Gelineau: We don't even know when that was.**

**Mr. Schechner:** All we can say is we looked at the voting records and that more than two families have lived in there since 1948. And just out of candor, in the recent search into the assessors records, it is assessed as a two family up until 1964 and then begins to be assessed as a four family in 1964.

**Ms. Gelineau:** Just like with the last case and these are throughout the city. The burden's not really on you. If there's no record on the building card vying illegal or obvious, it is what it is is, is my understanding.

**Mr. Schechner:** I understand your question.

**Ms. Gelineau:** Not a question to you. I'm confused why he's bringing this - - -

**Mr. Schechner to his client:** They are not sure why he's made the determination as far as what the use was originally.

**Ms. Gelineau:** Well you can't prove that it wasn't. Right?

**Mr. Hickernell:** As with the last case, he declined to come here to defend his determination or explain it.

**Ms. Gelineau:** Could he explain the use from back in 1988. I think at that time the city went out and inspected every property, all multi families.

**Mrs. Rando:** I think that's what they are doing now too.

**Mr. Schechner:** What is bazaar also is even in 2015, after the building inspector had made this determination, even in 2015 they came out and reinspected and this is in Exhibit 7.

**Ms. Gelineau:** But how did he explain why your use and occupancy from 1988?

**Mr. Schechner:** He didn't. He did not feel there was sufficient evidence.

**Ms. Gelineau:** I could be wrong but I think at the time one of the reasons they did this was a lot of these building cards were pretty scantily recorded. That's just the way it was. So when they did that in 1988, it took them months, or years maybe even, to go to every single multi-family and those were supposed to become their decision.

**Mr. Schechner:** The 1988 determinations?

**Ms. Gelineau:** Yes. I think that's what happened. So I don't know why that wouldn't supersede everything. It was obviously inspected.

**Mr. Schechner:** It was. I would say our predecessor, Counsel Laura Cannon wrote a memo in which many of these issues were raised, wrote a memo to inspector Forte. Many of these issues were raised and almost all of these documents were put in front of him and he had the benefit of these when he denied an occupancy permit a few months ago.

**Mrs. Rando:** And in 88 it says number of units, four.

**Ms. Gelineau:** No violations. Inspected. I'm just a little puzzled.

**Mrs. Rando:** Mr. Sergi, do you have any questions?

**Mr. Sergi:** I'm still a little confused here. I mean, this is a four family, in 1988 it was a four family, right?

**Mr. Schechner: Indeed.**

**Mr. Sergi: Okay. So what happened when you stopped using it as a four family?**

**Mr. Schechner: She received notice on the threat of fine that she should stop using it as a four family. This is Exhibit 6. They conducted a special investigation and they say two apartments must be vacant and two must remain vacant for three months time otherwise a building permit must issue to convert back to a two family (I don't know what that word is.)**

**Mr. Hickernell: That's a cease and desist order.**

**Mr. Schechner: And then she hired counsel and the prior counsel investigated and wrote a memo to the inspector which did not result in anything. He decided then to take the official action of officially applying for a use and occupancy permit for a four family so that she would be legal and he denied that.**

**Ms. Gelineau: But you had one.**

**Mr. Schechner: Whatever it is, he sent a cease and desist.**

**Ms. Guo: They said this is a mistake.**

**Ms. Gelineau: They said this is a mistake? No, I'm talking about the one in 1988 signed by Ralph Gaudet that says it's a four family and there are no violations.**

**Mrs. Rando: Mr. Hickernell, do you have any questions?**



**Mr. Hickernell:** No questions on the petition but a question for counsellor. Did you submit a Proposed Findings of Face and Decision?

**Mr. Schechner:** I did. I submitted a Proposed Decision and a Proposed Findings. I have extra copies.

**Mrs. Rando:** While he's looking, Ms. Hankins do you have any questions at this time?

**Ms. Hankins:** No questions at this time. Just to say that I think it definitely is obviously a four family in what should be a two or under family, but I think its also clear that they meet the preexisting nonconforming. So I'm frustrated that the building inspector isn't here to defend his decision.

**Ms. Rando:** Well he made the statement that he did not see that it was illegal.

**Mr. Sergi:** So the only reason he gave was because it was in a two family zone. I am trying to understand it.

**Mr. Schechner:** Yes, in Exhibit 9: "Records maintained by the building department do not pro-port (I think he meant) support the existence of a four family dwelling. Multi family dwelling are not allowed by right in a Residence B Zoning District. Therefore your application for a Certificate of Occupancy for a four family dwelling is hereby denied."

**Mrs. Rando:** I think the city has a program now where they are checking all multi-family houses and just to make sure there are no illegal apartments and yours does not seem to have an illegal apartment.

**Are there any other questions?**

**Mrs. Rando: Is there anyone in the audience that is in favor of this petition?**

**(4 People raised their hands.)**

**Is there anyone in opposition? Seeing none, is there anyone seeking information?  
Seeing none, I am ready for a motion on the Findings of Facts.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the  
reading on the Proposed Findings of Fact.**

**Do I have a motion on the reading of the decision?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to waive the  
reading of the Proposed Decision.**

**Mrs. Rando: I am ready to entertain a motion on the Proposed Findings of Fact.**

**On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted that the  
Proposed Findings of Fact be adopted by the board.**

**Mr. Schnechner: Can I interject? Is there any way I can amend the Proposed  
Decision.**

**Mr. Hickernell: I have some suggestions for that in a moment but we will do the  
Findings of Fact first.**

**Roll call on the Proposed Findings of Fact: Mr. Sergi, yes; Mr. Hickernell, yes; Ms.  
Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the decision to overturn the decision of the building inspector and continue the use of a four family.**

**Mr. Hickernell: I will make such a motion but I believe that the Petitioner's Counsel wishes to amend the Proposed Decision at this time.**

**Mr. Hickernell: Counsellor what I was going to do in the first sentence of the Proposed Decision is strike the reference to grant the variances requested and insert "overturn the decision of the building inspector" just so you are not asking for any variances.**

**Mr. Schechner: I apologize for that and I should state there affirmatively in number four - - -**

**Mr. Hickernell: My number four was: The building inspector is directed to issue the certificate of occupancy for a four family building for the locus.**

**Does that capture what you are going to say?**

**Mr. Schechner: Yes.**

**I will submit a copy of that to Pamela Doucette tomorrow.**

**Mrs. Rando: All right, do I have a motion on the decision as amended.**

**On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted that the Proposed Decision, as amended, be the board's decision.**

Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.

Mrs. Rando: One more motion is in order.

On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at 8 P.M.

Barbara Rando, chair  
11/14/17