



TOWN OF AVON
2019 SEP 11 A 9:40
TOWN CLERK

ZONING BOARD OF APPEALS

TOWN OFFICES/BUCKLEY CENTER
AVON, MASSACHUSETTS 02322-1496
TEL. (508) 588-0414 - FAX (508) 559-0209

PUBLIC HEARING MINUTES - June 25, 2019

Case #19-2 75 Robbins Street, Avon, MA

The Public Hearing was called to order at 7:10 p.m. by Kevin Foster.

The Public Hearing is the result of the Petition of Orland Morton, 75 Robbins Street, Avon, MA

The following were present: Appeal Board Members- Kevin Foster, Charles Comeau, Gerald Picardi, Edward Mekjian, Building Inspector, Robert Borden. Petitioner, Orland Morton and Attorney Morjieta Derisier.
Visitor's- None.

The members of the board and visitors introduced themselves and the board noted that the Public Hearing Notice(s) had appeared in the Enterprise on June 10 and 17, 2019 in the Legal Notice section.

Case #19-2 Orland Morton, 75 Robbins Street, Avon, MA

All business conducted regarding this Petition will here and forever be known as Town of Avon, Board of Appeals Case # 19-2 and Orland Morton will be referred to as the **"Petitioner"**.

Notice is hereby given that a Public Hearing will be held in the Town Offices, Town of Avon, Massachusetts on Tuesday, June 25, 2019 at 7:00 P.M. to hear the following petition(s) requesting a hearing to appeal the Building Commissioner's cease and desist order dated February 28, 2019. Case # 19-2 Petitioner, Orland Morton of 75 Robbins St., requests a hearing to overturn the Building Commissioner's cease and desist order under The Avon Zoning By-Law in Table 5-3 "Table of Use Regulations- Principal Uses", subsection A-8 which requires a special permit for the "renting of rooms in an existing dwelling to not more than six (6) persons". Mr. Morton is also requesting a hearing to overturn the Building Inspector's cease and desist order from the use and occupancy of any and all structures at 75 Robbins Street, Avon, MA. The Building Commissioner

reviewed the permit application for the work to be performed and the application did not accurately detail the work to be done on the house and accessory building, therefore there has been no Certificate of Use and Occupancy issued for the one (1) family dwelling or accessory building at 75 Robbins Street, Avon, MA.

The abutters were not notified of the intent of this hearing. Petitioner, Orland Morton states that the public hearing advertisement was incorrect and mentioned that they were going to request a continuance until a corrected public hearing advertisement could be done.

Kevin Foster read the application received by Mr. Morton which states that :

"Mr. Morton hereby petitions the Avon Board of Appeals for a hearing appealing the building commissioner's decision restraining his right as a homeowner to use his residential property as he so pleases. Section V of the Avon Zoning Bylaws, Use and Regulations, does not restrict the use of a detached dwelling on a separate lot occupied by not more than one family. An individual operating under 5-3, A-1 is permitted to rent the entire house for any length of time without restriction. Mr. Morton falls under this category and as such, he had previously received an occupancy certificate without any restriction limiting him to a 30-day rental. Further, under Section V of the Avon Zoning Bylaws, Use and Regulations 5-3 Table A-8 permits the renting of rooms in an existing dwelling to not more than six persons. Mr. Morton has not violated any of the Use and Regulations of the Avon Zoning Bylaws, and his property conforms to Table 5-3 A-1. Therefore, Mr. Morton is requesting an appropriate date and time to be heard on this matter."

1. Petitioner's Presentation
2. Comments, Open Discussion, Questions and Answers
3. Decision and Vote of the Board of Appeals

Petitioner's Presentation:

The Chair recognized the Petitioner- Orland Morton and Attorney Morjeta Derisier also introduced herself. Robert Borden noted that he understood as of four o'clock this afternoon that the Petitioner was requesting a continuance. Attorney Derisier states that the public hearing notice stated that there was an issue with the rooms however it was more about the renting of the dwelling and the restriction that was on the occupancy permit saying that it could be not less than 30 days. Attorney Derisier states she was told to come in and discuss this with the board.

Comments, Open Discussion, Questions and Answers:

Kevin Foster commented by stating that the issue that he has is there is no green cards so there is no actual application for a permit because you did not notify the abutters so this hearing cannot go forward. Attorney Derisier states that they are not requesting a special permit.

Robert Borden states that the dwelling and accessory building at 75 Robbins was issued a Certificate of Occupancy on March 6, 2019 as a single-family, three-bedroom structure with what was described to be a family entertainment structure. It came to my attention

shortly before that date that the dwelling and the accessory structure was being rented via Air B & B or that type of rental. I issued the Certificate of Occupancy on the sixth of March with the restriction that any short term "less than 30 days" granted rental of rooms or spaces in the dwelling or accessory building is prohibited. That prohibition was based primarily on the definition of transient that is in the building code where its occupants of the dwelling unit or sleeping unit for not more than 30 days. Transient rental structures require a different inspection and different public safety components. The building structures were inspected as one or two-family dwellings. The occupancy permit is a requirement of the building code, it is not a requirement of the Avon Zoning Bylaws. In the Avon Zoning Bylaw it does refer to in Section 12-4 "Certificate of Occupancy" reads the Certificate of Occupancy shall state that the building and use comply with the provisions of the bylaw and state building code as applicable in the town of Avon and in effect at the time of issuance. In my opinion, the zoning bylaw refers to the building code. In addition, Section A-8 refers to the renting of rooms in an existing dwelling of not more than (6) persons requires a special permit to the best of my knowledge there has been no special permit issued. So, following that line of reasoning is how I concluded that I can issue a permit for a 1 or 2 family structure-in this case a single- family home with the restriction that there shall be no transient rental.

Attorney Derisier notes that the main issue they are having is that the specific language about the 30 day or less rental, not necessarily about the rooms. Mr. Morton was not shown the alleged Air B&B ad and this is part of the issue, but just for the record there has been no rental of rooms. Mr. Morton travels often for work and is having work completed on the home and has to have someone present if there is an issue and I think that is where this 30-day rental issue comes before the board, not so much renting a room. To restrict Mr. Morton from renting his property for less than 30 days if he must find a house sitter would be an encumbrance on his title. I understand the issue of renting of rooms, but we are talking about the entire dwelling. I think he is entitled to rent the property to someone who is capable while he is gone without it being an encumbrance on his title. Mr. Morton added that his father is sick and when he is at the property he needs someone to look over him when he is not present. If I am not going to be at the property and I want to rent the entire property under Section 5-3, A-1 I have the right to do that without a permit.

Charles Comeau read the letter from the Board of Health agent which states that when she went to inspect the house it was occupied by someone other than the owner and both parties stated that they were renting the property for a short-term rental. Mr. Morton states that his friend was staying there with his mom. Mr. Morton notes that the Board of Health agent had appeared many times asking questions and it was noted that there was a trench dug from the barn heading toward the septic system and the current system is only good for a three-bedroom system. There was a large party at the home and approximately 100 people were present and it had to be broken up. There was a conversation that they were renting the place for a week or so. Mr. Morton notes that he was away to pick up his father and asked someone to watch his house while he was gone, and they held a party which was not authorized.

Kevin Foster asked for clarification as to why Mr. Morton was there. It is to ask to rescind the Cease and Desist from the building department? Mr. Morton states that he does not intend to rent rooms. He mentions that there is a possibility of renting the home and he

has advertised it but has not rented it in that fashion. He states that he is under Section A-1 and it does not require a permit. Edward Mekjian noted that when you change your house to a rental you must go to the board of health and get a certificate with every rental. Charles Comeau asked if Mr. Morton lives at the property. If the house is not being rented, then how is this decision going to impede from him living in the house. Mr. Morton states that the 30 days is a restrictive covenant from whenever I sell the property, that is a restriction that is not legal. Charles Comeau states that it is on every single-family home in Avon.

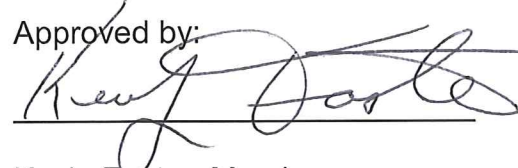
Attorney Derisier states that the issue is that he has had occupancy permits in Avon before that did not specifically list a restriction where there had to be 30 days or more for somebody to live in the property. Mr. Borden states that anything less than 30 days is transient. The propensity of the evidence with the Air B&B ads, the actions that occurred prior to the receipt of the certificate of occupancy indicate that there is something going on there other than a single family residence whether you are actually collecting rental dollars or not, you are providing the structures to people who are not the owner, do not have any responsibility to the property other than to you, and they are transient occupants whether you are collection money or not. The Certificate of Occupancy simply restricts you from renting as transient occupants. Anything less than 30 days per the definition in the building code is transient.

Mr. Morton feels that if he is going to sell the property then there is a restrictive covenant on the property. Edward Mekjian noted that this does not get recorded at the registry of deeds.

Decision and Vote of the Board of Appeals: Charles Comeau made a motion to deny the request to rescind the Building Inspector's Cease and Desist and states that there is no hardship and discussed the criteria for a hardship. The motion was seconded by Kevin Foster. Voted Unanimous.

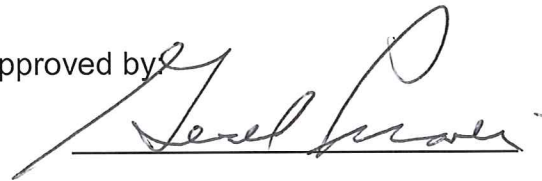
VOTED: to deny as stipulated.

Approved by:



Kevin Foster, Member

Approved by:



Gerald Picardi, Clerk

List of Documents:

Board of Appeals application
Letter from Board of Health Agent