

DUNBARTON ZONING BOARD OF ADJUSTMENT**Monday, May 8, 2023 ~ 7:00 p.m. ~ Town Office****MINUTES OF MEETING**

Chair John Trottier called the meeting to order at 7:00 p.m.

Attendance: Secretary Alison Vallieres, Dan Dal Pra, Chair John Trottier, Matthew Delude, and Alternate Derrick Labranche

Derrick Labranche was appointed as a Voting Member for this meeting in the absence of Jim Soucy.

Approval of previous meeting minutes: John Trottier noted two typographical errors (page 1 – cold should be could; page 3 – issued should be issue). **Dan Dal Pra made a motion to approve the minutes as amended; Alison Vallieres seconded the motion. All were in favor.**

Application #2023-ZBA-001, Wheeler Family Trust of 1993 by Paul W Bruzga – (D6-04-06, Low-Density Residential District) Appeal of Administrative Decision of the Dunbarton Building Inspector, Notice of Violation for violations of the Dunbarton Zoning Ordinance, regarding the unpermitted construction of a four- unit apartment building.

John Trottier said he went through his notes and the meeting minutes, noting this meeting was continued from April 10th when the Board requested from the applicant that he submit in writing that he continues to be the duly appointed power-of-attorney for the Trust. Mr. Trottier pointed out that Donna has provided the document submitted by Mr. Bruzga, which states he continues to have POA on the family trust. The chair stated that the public hearing was closed at the previous meeting on April 10th. He said there was some discussion of the applicant's building plans, adding that Donna provided copies of the plans, which included notes of the kitchens being eliminated in the bottom level, to board members. Mr. Trottier also noted that Donna left copies of the lease agreements that have been submitted at the members' seats. He asked the board members if there was any further discussion.

Matt Delude said he feels the administrative decision is valid and needs to stand, noting that the building inspector qualified and quantified that there were four dwelling units being inhabited by unrelated families/persons. He said the members heard that was true from Mr. Bruzga at the last session, and now the board has the leases that show that as true. Mr. Delude said he looked at the definition of family in the Zoning Ordinance as 'any number of people occupying a dwelling unit and living together as a single housekeeping unit', as these people are. He said there is not enough acreage for multi-family housing, so Mr. Bruzga cannot continue to have multi-family housing there. Mr. Delude said Mr. Bruzga has to reduce the number of occupants to two family units in the duplex. He said he thinks the building inspector's decision is correct and just needs to be affirmed by the board.

Mr. Delude said he could get into the issue of equitable and municipal estoppel because they were raised in the appeal, but he does not think they are relevant. He said the board heard at the last meeting that no representation was made by the Town of Dunbarton which is a requirement for an estoppel. Mr. Delude said no representation was made on which the applicant relied that would have any relevance. He said he does not feel that either one of those legal theories would apply. Mr. Delude

noted that the board does not have all the legal documentation that would apply relative to the trust, but they do have the document that shows Robin Morgan as the duly authorized person. Based on that document, he said it can be assumed that Mr. Bruzga has the legal authority to represent the trust. Mr. Delude said at the end of the day, looking at the merits of the matter, he has four families living in a duplex.

John Trottier said he finds the same thing. He said Mr. Bruzga was claiming municipal estoppel, but he had not heard any testimony that the Town of Dunbarton building inspector presented anything to the applicant that he would have relied on for the construction of the duplex units. Mr. Trottier said, if anything, the building inspector assisted him by saying he could not have those stoves in the basement. He added that those notes were placed on the plans and acknowledged by the applicant. Mr. Trottier said the matter of municipal estoppel is a moot point. Matt Delude said the only statements that Mr. Bruzga ever pointed to were comments made in the Notice of Violation (NOV) which have nothing to do with municipal estoppel, as they were not something he relied on.

The chair asked if other members had anything to add. Alison Vallieres said she agrees with Mr. Delude. Mr. Delude said he pulled relative case law about municipal and equitable estoppel, and common legal theories do not apply here. John Trottier agreed. He asked if there was any further discussion.

Paul Bruzga asked if he gets to present anything. Mr. Trottier said he does not as the public hearing was closed at the last meeting, and the board is good to go. Matt Delude stated that this is the discussion part of the hearing. Mr. Bruzga questioned why the board wanted him to come back today. Mr. Delude said it was to provide evidence that he had the authority to speak on the matter, he has presented documentation, and the board is assuming it is valid. Mr. Bruzga said he understood they were continuing the hearing for further presentation and discussion today. The chair said that was not the case. Mr. Bruzga said he completely disagreed with the municipal estoppel situation. Mr. Trottier said he is not going to debate the matter, he had closed the public hearing and brought it back to the Board who are discussing it, will act on it and move on. Mr. Bruzga said his concern is they are saying things that are completely false, and he wanted to straighten it out so the board would understand it. He said it is being made to sound like he went out and built the building with no permission. John Trottier said, based on the information provided, the appeal is whether or not there are four living units in the building. Mr. Bruzga said he built it exactly per the plans that were approved and was told it complied with all the town's requirements, and now the building inspector does not agree with what the prior building inspector decided. He said that is municipal estoppel. Matt Delude repeated that the board is technically in the discussion phase of the hearing. He asked the chair if he wanted to open it back up so Mr. Bruzga could have his say. Paul Bruzga said he would hereby request that the chair open it back up so he could talk for five minutes. The chair said he would give Mr. Bruzga five minutes.

Mr. Bruzga asked if the board had seen the building plans. Mr. Trottier said they saw the revised plans. Mr. Bruzga said the former building inspector was shown the original plans dated July 21, 2017. At that time labeling changes and the removal of two stoves were requested. He said the inspector assured him the building, according to the revised plans dated August 4, 2017, was fully proper and complied with all zoning laws and acceptable to the town. Mr. Bruzga said the town approved the revised building plans and issued a permit. He said of course the inspector approved it; the board is saying he did not know it existed or something. He said he did not understand exactly where that was coming from. Mr. Bruzga said the inspector issued the permit, oversaw the ongoing construction, and showed up dozens of times to make sure it was being built according to the plans that the board has seen. He said all construction was completed before the certificate of occupancy (CO) was issued.

Mr. Bruzga said the building department admitted the statement at the top of page two of the

NOV, which says after the CO was issued he then built two apartments, is false; they know it is false. He said he does not appreciate false accusations and feels the town should correct them. Mr. Bruzga said that is a big deal to him, yet the board seems to be glossing over that. He said the stoves were removed from the building, and the building is now in the exact condition it was when the CO was issued. He said he relied on the town to guide him through the process, he complied, they issued the CO. Mr. Bruzga said this is where municipal estoppel is clearly applicable. He said the current building inspector does not agree with the prior inspector who approved the plans, presented him with a building permit, and eventually a CO. He said that gives him municipal estoppel.

Mr. Bruzga said he notified the building department that the stoves have been removed, again saying the building is in the exact condition it was in when the CO was presented to him. He said there is no evidence that he is in non-compliance, nor that he did not follow the building plans as approved. Mr. Bruzga said he does not understand what is happening here, and he feels there is something going on behind the scenes. He said he put it all in writing, it got approved and built according to the plans, and he got a CO. He said he made a mistake which has now been corrected. Mr. Bruzga said one statement in the NOV basically says to demo the building, which is not appropriate, and that is municipal estoppel.

The chair thanked Mr. Bruzga for his explanation and closed the meeting to public comment, bringing it back to the board.

Matt Delude said what Mr. Bruzga said is basically irrelevant. He referred to NH Law, 164 N.H. 62 (2012), *Town of Atkinson v Malborn Realty Trust*, reading the following: *The doctrine of municipal estoppel has been applied to municipalities to prevent unjust enrichment and to accord fairness to those who bargain with the agents of municipalities for the promises of the municipalities. The elements of estoppel are: First, a false representation or concealment of material facts must have been made with knowledge of those facts; second, the party to whom the representation was made must have been ignorant of the truth of the matter; third, the representation must have been made with the intention of inducing the other party to rely upon it; and fourth, the other party must have been induced to rely upon the representation to his or her injury. Each element of estoppel requires a factual determination.*

Mr. Delude said no statements or any representations were made by the Town of Dunbarton that were false and that Mr. Bruzga relied upon. He said the closest Mr. Bruzga comes is a comment of the falsity of a fact made in the NOV after-the-fact. Mr. Delude said that has nothing to do with municipal estoppel because he could not have relied on it because it was made after the violation. He said the fact that the applicant built the building according to plans has absolutely nothing to do with what the board is looking at. He said what the board is looking at is the fact there are four families residing in this building, which is a violation of the Zoning Ordinance and is part of the NOV. Mr. Delude said it is true there is a comment on how it was constructed, but there is also a specific statement in there by the building inspector that the presence of four dwelling units on the property constitutes a violation of the Dunbarton Zoning Ordinance. He said the NOV also says the building inspector also confirmed that each of the four dwelling units was inhabited by unrelated families or persons. Mr. Delude said the NOV goes on to note that the parcel consists of 7.19 acres and is not within the Multi-Family District overlay. The building permit was issued for a duplex. Mr. Delude continued to refer to the NOV that states the property must consist of 11 acres of land for that many dwelling units. He said the basis of the administrative decision was that he was running a place with four families. Mr. Delude said Mr. Bruzga has admitted he is, the board has leases showing that he is, everything else is irrelevant, and municipal estoppel does not apply.

John Trottier said he would agree, and based on information provided, there are four units. Hearing no further discussion, the chair said he would entertain a motion.

Matt Delude moved to deny the administrative appeal of the NOV issued by Mr. Arsenault for 51 Morse Road, Map D6-04-06, , with specific findings on evidence presented to the board, additional live testimony from the applicant himself, live testimony from tenants who have resided in the building, copies of leases received by the board, there are four families living in this duplex which is designed for a two-family dwelling unit; factual findings that there are four families living there, evidence has been established there are four families living there. Mr. Delude said he would move to deny the appeal based on four families living there as defined by the Zoning Ordinance: *family* – any number of people occupying a dwelling unit and living together as a single housekeeping unit; *dwelling, duplex (two-family)* – a building/structure containing two dwelling units, sharing a common wall, and otherwise connected by common construction, designed for, or occupied exclusively by two families living independent of one another; and *dwelling, multi-family* – a building/structure containing three or more dwelling units, attached and otherwise connected by common construction, designed for, or occupied exclusively by, three families or more living independent of one another. John Trottier added that multi-family is not permitted in the Low-Density Residential District. Mr. Delude agreed with the additional statement. Alison Vallieres seconded the amended motion. All were in favor. Appeal DENIED.

The chair stated that there is a 30-day appeal period. Paul Bruzga said he was not sure why the board is saying there are four families living there. He said the lower units have been empty since March. Matt Delude said the information discussed was as of the date of the violation. John Trottier agreed that the decision was based on details from the time of inspection and notice of violation.

Brian Arsenault, Building Inspector, said the town will be moving forward with monetary fines, which to date, total roughly \$20,000. Mr. Bruzga asked if he had not remedied the violation by taking the stoves out. John Trottier stated that is not the ZBA's decision.

Adjournment: Having no further business, Dan Dal Pra made a motion to adjourn the meeting at 7:20 p.m. Derrick Labranche seconded the motion. All were in favor.

Respectfully submitted,
Donna White, Office Administrator