

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

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Associate Members

Jared F. Nokes, J.D.
George Panagopoulos

MEETING MINUTES

Wednesday 26, 7:00 p.m., Lower Conference Room

Present: James F. McGrail, Esq., Chair
J. Gregory Jacobsen, Vice Chair
Scott Steeves
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
George Panagopoulos

Staff: Jennifer Doherty, Administrative Assistant

Mr. McGrail called the meeting to order at 7:00 p.m. The plans, documents, studies, etc., referred to are incorporated as part of the public record, and are on file in the Planning and Zoning office. In addition, the legal notice for each hearing was read into the record. Abutters within 300 feet of the subject property, as well as abutting towns of Westwood, Needham, Canton, and Boston, were notified of each hearing. The hearings for this meeting of the ZBA were duly advertised in *The Dedham Times* in accordance with the requirements of MGL Chapter 40A, Section 11.

Present and Voting James F. McGrail, Esq., J. Gregory Jacobsen, , Scott Steeves,
Patrick Maguire, George Panagopoulos

Applicant:	Leslie Ann Colligan
Property Address:	215 Adams Street, Dedham, MA
Property Owner:	Leslie Ann Colligan
Property Owner Address:	As Above
Applicant Representative:	Peter Zahka, Esq.
Legal Notice:	The Zoning Board of Appeals for the Town of Dedham, Massachusetts, will hold a public hearing in the Town Office Building, 26 Bryant Street, Dedham, MA, at 7:00 pm on <i>Wednesday, October 17, 2018</i> on the application of Leslie Ann Colligan, Trustee of the Leslie Ann Colligan Living Trust,

	215 Adams Street, Dedham, MA. The Applicant seeks an appeal of the Dedham Building Commissioner's determination that the real estate know and number as 213 Adams Street, is a two-family dwelling, and for a determination that said dwelling is a single-family dwelling.
Section of Zoning Bylaw:	<i>Town of Dedham Zoning By-Law Sections 9.2.2 and 10, and Table 1.</i>
Zoning District, Map and Lot:	The property is located in the Single Residence B Zoning District. Map and Lot: 153/80
Date of Application:	September 28, 2018
Date of Public Hearing:	October 17, 2018
Date of Decision:	October 17, 2018
Vote:	Unanimous 5-0

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on October 18, 2018, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, and E. Patrick Maguire, MLA, RLA, CLARB, LEED AP. In the absence of Jason Mammone, P.E., the Chairman appointed Associate Member George Panagopoulos, to sit in his place. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:00 p.m., the Chairman called for the hearing on the petition of Leslie Ann Colligan, Trustee of the Leslie Ann Colligan Living Trust, of 215 Adams Street Street, Dedham, MA (hereinafter referred to as “Applicant”) appealing the decision/determination of the Dedham Building Department that the dwelling at real estate known and numbered as 215 Adams Street, Dedham, MA contains two dwelling units or is a two-family dwelling and for a determination that said dwelling contains one dwelling unit and is a single family dwelling. The property is located at 215 Adams Street, Dedham, MA, and is in the Single Residence B (SRB) Zoning District. *Town of Dedham Zoning By-Law Section 9.2.2, and Table 1.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of the Applicant were Erin, Kevin, and Abby Wall, Applicant’s daughter, son-in-law, and granddaughter, and Lester Holmes, Applicant’s father. Attorney Zahka had previously submitted a plot plan, floor plan, and architectural renderings of the proposed changes to the property, as well as photos of the existing conditions. The transcript from the

hearing is the primary source of evidence and is incorporated herein by reference. At the hearing Applicant was afforded an opportunity to make a full presentation.

The Subject Property, shown on Dedham Assessors Map 153, Lot 80, contains approximately 14,254 square feet of land and has approximately 95 feet of frontage on Adams Street. According to the Dedham Zoning Map, the Subject Property is located in the Single Residence B (SRB) Zoning District. The Subject Property is currently occupied by a single-family raised ranch/split style dwelling. According to the records maintain by the Dedham Board of Assessors the dwelling was constructed circa 1973. Both levels of the dwelling currently contain a kitchen, bathroom and bedrooms. The same (including the two kitchens) have been in existence since prior to Applicant's acquisition of the Subject Property in 1998. The stairway at the front entry of the dwelling provides access to both levels. The dwelling is serviced by a single utility meter. The Subject Property is occupied by the Applicant and the Applicant's immediate family (including Mr. & Mrs. Colligan, Mrs. Colligan's father, and the Colligan's daughter, son-in-law, and granddaughter). Applicant has never and does not intend to rent or lease either floor as separate dwelling unit.

Applicant applied to the Dedham Building Department for a Building Permit for a 24' x 25' two-story addition to the house. The lot, existing dwelling, and the proposed addition all comply with the Dedham Zoning By-Law dimensional requirements for the SRB Zoning District. The lower level addition includes a bedroom, handicapped accessible bathroom, and living area. The existing lower level kitchen will be renovated. The upper level addition will include a new master bedroom, master bathroom, and shower. In addition, an elevator will be installed in the existing garage allowing access between the two floors. Mr. Colligan is a disabled Vietnam Veteran and the addition (including the elevator) are designed to make the entire home handicapped accessible.

On or about September 28, 2018, the Assistant Building Inspector denied the building permit application for the addition and issued a letter to Applicant wherein he made a decision/determination that the house was an improper two-family dwelling or had an improper "in-law dwelling" (not allowed in the SRB Zoning District) because the Building Department "considers the installation of 2nd kitchens in most instances to be the deciding factor in whether or not you are creating a second dwelling unit." Applicant disputes the decision/determination of the Assistant Building Inspector and contends that the dwelling is and has always been a single-family dwelling (and will continue as such after the addition). Therefore, pursuant to

Sections 8 and 15 of Chapter 40A of the General Laws of Massachusetts and Section 9.2.2 of the Dedham Zoning By-Law, Applicant appeals this decision/determination and has requested the ZBA make a determination that said dwelling contains only one dwelling unit and is a single-family dwelling.

Section 10 of the Dedham Zoning By-Law defines a “dwelling unit” as follows:

One or more rooms constituting **independent** living quarters for a single family, including cooking, sleeping and bathroom facilities, and **physically** separated from any use not accessory to such dwelling, and from any other dwelling unity by open space, party wall, or hallway. [Emphasis added.]

Section 10 of the Dedham Zoning By-Law defines a “family” as follows:

One person or several individuals living together as a single and separate housekeeping unit and related by blood, marriage, adoption and not more than three individuals no so related...

As indicated above, in his letter of September 28, 2018, the Assistant Building Inspector states that “the Town of Dedham Building Department considers the installation 2nd kitchens in most instances to be the deciding factor in whether or not you are creating a second dwelling unit.” At the outset it is noteworthy that the Dedham Zoning By-Law does *not* make a second kitchen the deciding factor. Instead the definition specifically requires “independent” living quarters which are “physically” separated from other dwelling units. While the Applicant may have kitchens, bathrooms, and bedrooms on both levels of their dwelling, the same are not “independent” living quarters and are not “physically” separated from any other dwelling unit. The house was constructed as a raised ranch/split style (which by design have two levels) and is open allowing for the free-flow of traffic throughout the entire structure. It is noteworthy that the proposed addition includes installation of an elevator (allowing for easier access between the upper and lower levels). In addition, the house contained two (2) kitchens at the time of Applicant’s purchase (20 years ago)¹. Furthermore, there is only (by definition) a single family living in the dwelling. Therefore, by Dedham’s own definition the dwelling is a single-family dwelling.

Admittedly, the home *could* be used as a multi-family unit but only with certain structural alterations (including but not necessarily limited to closure of the interior front entrance and providing a second means of egress for each level). In *Boch v. Edgartown*, Duke Superior

Court Civil Action No. 2627 (1988), the Court determined that the correct tests to determine whether a home is a single or two-family dwelling are (1) actual use test or (2) design test. In *Boch*, Plaintiff had constructed three kitchens, one on each floor of the house in a single-residence district in Edgartown, Massachusetts. In addition, there were ample features that could accommodate multiples families (as Mr. Boch frequently had guests stay in addition to his seven adult children and their children). Much like *Boch*, the Subject Property is both used as a single family dwelling and was designed as a single family dwelling. The *Boch* court held that, though the home could potentially accommodate more than one family, “potential use after alterations” is not the test, citing to the “Use Test” in *Lynn v. Olanoff*, 414 Mass. 249 (1943) and the “Design test” in *Van Arsdale v. Provincetown*, 344 Mass. 146 (1962).

Applicant’s dwelling is a single-family dwelling under the “Use Test” set forth in *Lynn v. Olanoff*, *supra*. The Court in *Lynn*, held that the number of dwelling units can be determined by evidence of actual use. In *Lynn*, the evidence (including a separate albeit related family living on the third floor) showed that a permitted two-family home was actually being *used* as a non-permitted three-family. Unlike the dwelling in *Lynn*, Applicant has always and continues to use the Subject Property only for Applicant’s own family (as defined under the Dedham Zoning By-Law). Applicant has never and does not ever intend to rent either level of the house as a separate dwelling unit. Therefore, it is a single-family dwelling.

Likewise, Applicant’s dwelling is a single-family dwelling under the “Design Test” set forth in *Van Arsdale v. Provincetown*, *supra*. In *Van Arsdale*, the Court determined that the number of dwelling units can be determined by the design of the structure. In the *Van Arsdale* court, the Plaintiff neighbors filed a complaint against the town building inspector to compel him to revoke a building permit issued to a property owner. The particular zoning district allowed for two-family units but no more. The proposed building mirrored a two-family but included a solid eight-inch-thick wall extending from cellar to roof, dividing each of the two units into four individual units. The architect also testified that the building was designed for four families. Thus, a building to be occupied by four families would be a four-family dwelling. Unlike, the dwelling in *Van Arsdale*, the design of Applicant’s home evidences that the same is a single-family dwelling. The second kitchen is not closed off from the rest of the house nor is it separated by a door or by a hallway as to indicate a separate existence. As noted above, the proposed addition includes an elevator allowing for easier access between the two floors.

Furthermore, the entire home utilizes the same entrances and exits and there are single meters for utilities.

In *Hayhurst v. Campbell*, Mass. Land Court Misc. Case No. 262031 (2005) the Land Court applied both the “Use Test” and “Design Test” to uphold the Building Inspector’s determination that a house was a single-family dwelling and not a two-family dwelling. The use and design of the house in *Hayhurst* are similar to the use and design of Applicant’s dwelling. Specifically, the Court found a single-family dwelling existed when there (a) were no appreciable barriers to the free flow of traffic, (b) were multiple points of ingress and egress but one utility meter and one mailbox, and (c) were two kitchens but the house was used by only one family. All of these describe Applicant’s house.

No one appeared in opposition to the requested relief. Applicant submitted a petition signed by thirteen abutters indicating their support for the requested relief.

Upon motion duly made the ZBA voted unanimously to reverse the determination of Dedham Building Department and to make a determination that the dwelling located at 215 Adams Street, Dedham, MA is a single family dwelling upon the following terms and conditions:

1. Applicant (and any successor in interest to the Subject Property) shall not rent or lease any floor of the house as a separate dwelling unit.
2. Applicant (and any successor in interest in the Subject Property) shall not install doors or construct any other barrier separating the two levels of the house.

The ZBA recognizes that the determination as to the number of dwelling units in any structure must be made on a case by case basis. Therefore, it is the intent that this decision and the determination herein be limited to the Subject Property.

Applicant/Owner:	Annette Christ Thomas
Property Address:	99 Quincy Avenue, Dedham, MA 02026
Applicant Representative:	Annette Christ Thomas

Legal Notice:	To be allowed an extension for a variance for a front yard setback of 11.5 feet instead of the required 20 feet to construct a portico over the front door of a single family dwelling
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Section of Zoning Bylaw: Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements

Zoning District, Map and Lot: General Residence, Map 128, Lot 29
Date of Application: September 28, 2018
Date of Public Hearing: October 17, 2018
Date of Decision: October 17, 2018
Vote: 5-0 Unanimous

Mr. McGrail called for the hearing regarding the extension of a variance for a front yard setback of 11.5 feet instead of the required 20 feet to construct a portico over the front door of a single family dwelling for the applicant, Annette Christ Thomas. The property is located at 99 Quincy Avenue, Dedham, MA, and is in the General Residence zoning district. *Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements*

Ms. Thomas explained that she had recently had a baby and therefore had not been able to perform the work that had previously been approved by the Zoning Board of Appeals on December 13, 2018. She was currently seeking an extension for this variance. The original variance was for a front yard setback of 11.5 feet instead of the required 20 feet so she can construct a portico over her front door as a shield against the weather.

No one in the audience spoke in favor or in opposition to the proposed portico.

Upon motion duly made by J. Gregory Jacobsen and seconded by E. Patrick Maguire the Zoning Board of Appeals had voted unanimously (5-0) to extend the decision granted on December 13, 2017.

Applicant/Owner: OCW Retail/Dedham Mall
Property Address: 150-370 Providence Highway, Dedham, MA
Applicant Representative: Peter Zahka, Esq.

Legal Notice: The Applicant seeks to be allowed such waivers from the Dedham Sign Code a required to remove four (4) freestanding (wayfinding) signs, and replace said signs with seven (7) new freestanding signs, increasing the total number from 13 to 16 and increasing the total area from 554.41 s.f. to 578.41 s.f. The property is located at 150-370 Providence Highway. Dedham, MA, and is in the Highway Business Zoning District.

Zoning District, Map and Lot: General Residence, Map 128, Lot 29
Date of Application: September 28, 2018
Date of Public Hearing: October 17, 2018
Date of Decision: October 17, 2018
Vote: 5-0 Unanimous

Mr. McGrail called for the hearing regarding 150-370 Providence Highway, Dedham Mall. Representing the property for The Wilder Company was Mr. Matt Joyce, and attorney Peter Zahka. Mr. Zahka explained that the Dedham Mall wished to replace three of the internal “wayfinding” signs and add four more for directional purposes. It increases the total square footage of signage

but they were still well below the allowed square footage per the bylaws. They are allowed almost 7,500 square footage of signage and with the new signs they were under 5,100 square footage. The signs could not be seen from the street, as they were all within the property and used for locating stores. Attorney Zahka also indicated that The Wilder Company had gone before the Design Review Advisory Board the previous night, and they had given their recommendation and approval for the signs. Mr. McGrail stated that they did have a recommendation memo from the DRAB board in their possession. Mr. Jacobsen asked if the signs were lit at all, and Mr. Joyce replied no, they were not lit, they were made with a reflective decal lettering that would reflect when car lights hit them. Mr. McGrail asked if anyone was in attendance to speak for or against the application, and no one was present.

Mr. Maguire made a motion to grant waivers from the sign code for the additional signs and the motion was seconded by Mr. Jacobsen and all were in favor. The Zoning Board of Appeals voted unanimously in favor (5-0).

Applicant:	Kevin Costello
Project Address:	35 Roosevelt Road, Dedham, MA
Zoning District:	Single Residence B
Representative(s):	Peter A. Zahka II, Esq., 12 School Street, Dedham, MA Kevin Costello, Owner
Petition:	To be allowed such Special Permits and variances as required to construct a single family dwelling on a lot with an area of 7,500 square feet instead of the required 12,500 square feet, lot frontage and width of 75 feet instead of the required 95 feet, and with a resulting impervious surface of 25% of the lot area, including the area to the center line of any new street in the Single Residence B zoning district and the Aquifer Protection Overlay District
Section of Zoning Bylaw:	Town of Dedham Zoning Bylaw Sections 8.2, 9.2, 9.3, and Table 2

The applicant had requested a continuance on this application as the applicant was still in talks with his neighbors. A motion was made by Mr. Jacobsen to continue this application, the motion was seconded by Mr. Maguire, and all were in favor. The application was continued to November 14, 2018.

Mr. McGrail wished to bring the Board up to speed on events that had occurred in relation to 63 Colonial Drive, and Mr. Steve Clifford. He explained that Mr. Clifford had falsely represented himself as the owner of the property at 63 Colonial Drive, and had also done so under the guise of an LLC that was never formed. This had never happened before and to prevent it from happening ever again, the Board would like to now require applicants to present a deed along with their application to prove ownership. If they are not the owner, as frequently they are not, they would need to produce an affidavit from the owner stating that the owner is aware of and supports the application. If the applicant is an LLC, they must present a certificate of good standing from the Secretary of State. These new processes would go into effect as of January 1, 2019. Mr. McGrail stated that they had reached out to the applicant three times to hear their side of the story, and no reply was ever received.

A motion was made by Mr. Steeves to put into place the following new procedures on January 1, 2019:

- Applicants must present a deed of ownership for the property they are requesting a waiver, special permit, or any other Zoning article action.
- If Applicant is not the owner of the property, they must provide an affidavit from the owner supporting the application, and stating that they are aware of the application.
- If Applicant is a company, LLC, LLP, etc, they must present a certificate of good standing from the Secretary of State.

The motion was seconded by Mr. Jacobsen, and all were in favor. The new guidelines were adopted unanimously (5-0).

Mr. McGrail introduced Mr. John Sisson, Economic Development Director, who was presenting the new Dedham Square Design Guidelines to the Board. Mr. Sisson also introduced Peter Smith, Vice Chair of the Dedham Square Design Guidelines Committee. Mr. Smith explained this was not just a design guideline for Dedham Square and the growth it was seeing, but it was also a strategic plan with recommendations for the gateways to Dedham, and supporting pedestrian activity. Mr. McGrail stated that the Board has been very conscious of this activity and had already been trying to implement some of the guidelines. George Panagopoulos served on the Committee and was now an associate member of the Zoning Board. He stated that they had really looked towards planning for the future with these guidelines, and a lot of good and hard work had gone into these plans. He stated this had been a very transparent process that had brought the community together. Mr. Maguire wished to ask why had the focus been on Dedham Square only, he was curious as to why this was not implemented towards other squares, like Oakdale. Mr. Smith stated that they did originally have town wide plans, and that the East Dedham Guidelines had been put into effect. He agreed that perhaps they should be adopted town wide, and they are speaking to other Boards about this. The only reason Dedham Square had been first with these guidelines was because of the development pressure that was being applied at the time. He welcomes continuing the discussion on this matter and opening it up to town wide design guidelines. Some discussion ensued regarding pedestrian and bike crossing over Route 1, the rotary, and the Staples area. Mr. McGrail expressed that they were very thankful for the hard work the committee had put into these guidelines and everyone was very appreciative this was done.

A motion was made by Mr. Steeves to accept the minutes from the September 26, 2018. Mr. Jacobsen seconded the motion and the Board voted unanimously in favor (5-0).

A discussion ensued as to the future of the Design Guideline Committee. The Board will wait until they are asked for a representative to decide whom they will recommend.

A motion was made by Mr. Maguire to adjourn the meeting. The motion was seconded by Mr. Jacobsen, and the Board voted unanimously in favor (5-0). The meeting was adjourned at 7:55 p.m.