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Dedham Town Hall
26 Bryant Street
Dedham, MA 02026-4458
Phone 781-751-9242
Fax 781-751-9225

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Jared F. Nokes, J.D.
George Panagopoulos

**ZONING BOARD OF APPEALS
DECISION**

Applicant: Joseph P. Gatto and Cynthia A. Gatto
Project Address: 68 Stoughton Road, Dedham, MA

Applicant Representative(s): Peter A. Zahka, Esquire, 12 School Street, Dedham
Legal Notice: The Zoning Board of Appeals for the Town of Dedham, Massachusetts, will hold a public hearing in the Lower Conference Room of the Town Office Building, 26 Bryant Street, Dedham, MA on Wednesday, March 6, 2019, at 7:00 p.m., on the petition of 68 Stoughton Road, Dedham, MA. The Applicant, Joseph P. Gatto, Cynthia A. Gatto, and Joseph N. Gatto, seeks an appeal of the Dedham Building Commission's determination of the proposed addition (including second kitchen) to the real estate at 68 Stoughton Road, Dedham, MA converts said dwelling into a two family home and for a determination that said dwelling with the proposed addition is a single family home.

Section of Zoning Bylaw : *Town of Dedham Zoning By-Law Section 9.2.2; Table 1.*

Zoning District, Map and Lot: Single Residence B (SRB) District, Map 167, Lot 39

Date of Public Hearing: Wednesday, March 6, 2019
Date of Decision: Wednesday, March 6, 2019
Vote: 4-0 Unanimous
Voting Members: Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, and Jason Mammone, P.E..

Date Filed with Town Clerk: March 18, 2019

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on March 6, 2019, 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 Jason Mammone, P.E.. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:15 p.m., the Chairman called for the hearing on the petition of Joseph P. Gatto, Cynthia A. Gatto, and Joseph N. Gatto, of 68 Stoughton Road, Dedham, MA (hereinafter referred to collectively as the “Applicants”). Applicants appeal the Dedham Building Commission’s determination that the proposed addition (including second kitchen) to the real estate at 68 Stoughton Road, Dedham, MA, converts said dwelling into a two-family home and for a determination that said dwelling with the proposed addition is a single-family home. The property is located at 68 Stoughton Road, Dedham, MA, and is in the Single Residence B (SRB) Zoning District. *Town of Dedham Zoning By-Law Section 9.2.2; Board of Appeals Powers, Section 10 Determinations, and Table 1.*

Applicants were represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicants were Joseph P. Gatto and Joseph N. Gatto. Attorney Zahka had previously submitted plot plans of the Subject Property (existing and proposed), architectural plans and drawings (including floor plans and elevations), and photographs of the existing dwelling. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference. At the hearing Applicants were afforded an opportunity to make a full presentation.

Applicants are the co-owners of the real estate known and numbered as 68 Stoughton Road, Dedham, Massachusetts, as shown on Dedham Assessors Map 167, Lot 39 (hereinafter referred to as the “Subject Property”). The Subject Property contains approximately 12,852 square feet of land and has approximately 76 feet of frontage on Stoughton Road. The Subject Property is located in the Single Residence B (SRB) Zoning District.

The Subject Property is currently occupied by a single-family 2-story colonial style dwelling. According to the records maintained by the Dedham Board of Assessors, the

dwelling was constructed in 1951. The current dwelling is relatively small with 720 sf of living area on the first floor and 540 sf of living area on the upper floor. The existing dwelling has three bedrooms and one bathroom, and six total rooms. There is one kitchen in the current dwelling. The dwelling is serviced by a single electric and gas meters. The Subject Property is occupied by all the Applicants (as well as Joseph N. Gatto's son). Applicants have never and do not intend to rent or lease any portion of the dwelling to a non-related party.

Applicants applied to the Dedham Building Department for a Building Permit for an addition to the existing house.¹ The proposed addition would conform to the applicable dimensional requirements under the Dedham Zoning By-Law. The addition included bedrooms, bathrooms, laundry room, and a (second) kitchen. There would continue to be a single front and rear entrance to the house (i.e., there would not be separate entrances for different portions of the house). In the interior there are no walls or doors separating different portions of the house. In addition, the bathrooms serve the entire house. Applicants intend to continue to reside in the entire house as a family unit and do not intend to lease any portion of the house to any unrelated third party.

On or about December 18, 2018, the Assistant Building Inspector denied the requested Building Permit and issued a letter to Applicants wherein he made a decision and/or determination that the house with the proposed addition was an improper two-family dwelling or had an improper "in-law dwelling" (not allowed in the SRB Zoning District) because he "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."² Applicants dispute the decision/determination of the Assistant Building Inspector and contend that the dwelling is and with the addition (including the second kitchen) will continue to be a single-family

¹ With the Building Permit application, Applicant submitted plans dated January 16, 2018, revised through December 11, 2018, prepared by AD Architects.

² Applicant made some plan revisions in response to the Asst. Building Inspector's letter of December 18, 2018. After review of the revised plans, the Asst. Building Inspector issued the identical letter on February 6, 2019. It should be noted that the plans are by AD Architect, dated January 16, 2018, and revised through December 11, 2018. It does not appear that the date of the plans were changed (or a new revision dated added) after revisions were made to the same in response to the initial letter from the Asst. Building Inspector.

dwelling. 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 Applicants have appealed this decision/determination to the Dedham Zoning Board of Appeals (hereinafter referred to as the “ZBA”).

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 unit 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 December 18, 2018 (and February 6, 2019), the Assistant Building Inspector states that “the installation of 2nd kitchens in most instances . . . [is] 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 house may have bathrooms, and bedrooms in different areas (or even on different levels), the same do not establish “independent” living quarters which are “physically” separated from any other dwelling unit. Furthermore, there is only 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 closures separating various portions of the dwelling and providing a separate means of egress for each portion of the house). 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 multiple 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).

Applicants’ 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. Applicants have always and will continue to use the Subject Property only for Applicants’ own family. Applicants have never and do not ever intend to rent any portion of the house as a separate dwelling unit. Therefore, it is a single-family dwelling.

Likewise, Applicants’ 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. The design of Applicants’ home evidences that the same is a single-family dwelling. Different portions or sections of the dwelling are not closed off from other portions or sections of the dwelling nor separated by interior doors as to indicate a separate existence. Furthermore, the entire home utilizes the same entrances and exits and there are single meters for utilities.

No one appeared in opposition to the requested relief. Applicants submitted a petition signed by all direct abutters on Stoughton Road, as well as those directly across the street from the Subject Property, indicating their support for the requested relief.

Upon motion duly made the ZBA voted unanimously (4-0) to reverse the determination of Dedham Building Department and to make a determination that the dwelling with

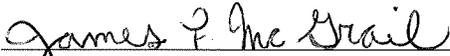
proposed addition (including the second kitchen) located at 68 Stoughton Road, Dedham, MA is a single-family dwelling upon the following terms and conditions:

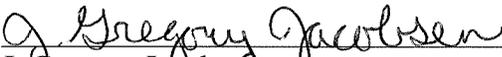
1. The door from the rear left bedroom (shown as Bedroom 4 on the submitted floor plans) shall lead only to a rear deck or porch which is fully enclosed via a banister or similar railing system (i.e., does not provide access to the back yard) or (at Applicants' option) in the alternative is eliminated.
2. No door or other physical barrier shall be erected in the hall between the dining room and living room shown on the submitted floor plans.

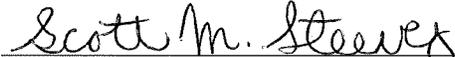
The ZBA recognizes that the determination as to the number of dwelling units in any structure must be made on a case by case basis. Therefore, it is the intent that this decision and the determination herein be limited to the Subject Property.

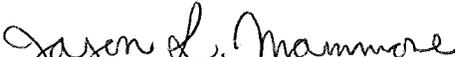
Appeals of this decision, if any, shall be made pursuant to Section 17 of Chapter 40A of the General Laws of Massachusetts and shall be filed within twenty days after the date of filing of notice of this decision with the Town Clerk

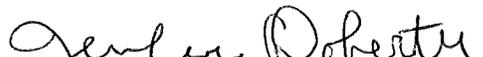
Dated: March 18, 2019


James F. McGrail, Esq.


J. Gregory Jacobsen


Scott M. Steeves


Jason L. Mammone, P.E.


As attested by Administrative Assistant
Jennifer W. Doherty