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**Planning Board**

**Michael A. Podolski, Esq., Chair**

**John R. Bethoney, Vice Chair**

**Robert D. Aldous, Clerk**

**Ralph I. Steeves**

**James E. O’Brien IV**

**Planning Director**

**Richard J. McCarthy Jr.**

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**TOWN OF DEDHAM**

**PLANNING BOARD**

**MEETING MINUTES**

**April 6, 2017, 7 p.m., Lower Conference Room**

**Present:** Michael A. Podolski, Esq., Chair

John R. Bethoney, Vice Chair

 Robert D. Aldous, Clerk

 Ralph I. Steeves

 James E. O’Brien IV

 Richard J. McCarthy, Jr., Planning Director

Call to order 7:00 p.m. The Pledge of Allegiance was recited. Plans, documents, studies, etc., referred to are incorporated as part of the public records and are on file in the Planning and Zoning office.

**RECONSIDERATION OF ARTICLE 24**

*To see if the Town will vote to amend the Zoning Bylaw by inserting a new definition in Article 10 for Lodging House, and amending Section 3.1.3 Use Regulations Table, and inserting a new use “Lodging House” as #8 under A. Residential Uses.*

After approving the amendment of Article 24, the Board received an e-mail from Building Commissioner Kenneth Cimeno requesting that the Board reconsider the vote. The original article proposed creation of a bare definition of board/rooming houses. Mr. Cimeno was present to clarify the definition of a boarding house so it can close the gap on some of the bed and breakfast operations that are cropping up. Under Accessory Use in the Zoning Bylaw it allows up to three people, unrelated, as well as family, living in one house. With four or more people, it becomes a boarding, rooming, or lodging house under the law and requires a license from the Board of Selectmen. The Building Department would be able to define it so that these can be regulated in a fashion where they would not be allowed in the residential zoning districts. This is the intent of the bylaw, and he asked the Board to support this to help further define what the limitations of these bed and breakfast operations are. It would put a limit on of not more than three (3) persons unrelated in a dwelling unit. Right now, a boarding, rooming, or lodging house is not specifically defined in the Zoning Bylaw, just generally defined. It is not clear at times when the Building Department is taking someone to court. They need clarity for future enforcement actions.

The Zoning Bylaw definition is in Section 3.1, Accessory Use Table, Residential, I.5: “The regular renting of rooms or the furnishing of table board in a dwelling by the owner-occupant thereof to not more than three (3) persons.” This has been a longstanding bylaw. Mr. Cimeno explained enforcement; when a complaint is received, they investigate it and taken appropriate legal action in court. Mr. Mr. Podolski said that the presentation by Fred Johnson, Assistant Building Inspector, seemed to indicate that he had no way to figure out if there were three or more unrelated people living in a single family dwelling. Mr. Cimeno said that, from a practical standpoint, they have had situations in which they had what they consider illegal boarding houses. In these instances, the Building Department goes before a clerk magistrate or a judge, who assesses the situation. If there are four or more persons in the building, there must be reduction to three and the complaint may be dismissed, or there can be a fine.

Mr. Podolski asked the three person Zoning Bylaw is not being amended instead of creating a new one. Mr. Cimeno said that under Chapter 48, Section 3, the definition of family would include three people who are not related. Mr. Podolski asked why they could not make the boarding room statute the same. Mr. Cimeno said the boarding room/lodging house statute is a State law. Mr. Podolski asked why they could not make the bed and breakfast three or more. Mr. Cimeno said it would then be a boarding house or lodging house that would have to be licensed by the Board of Selectmen and then it would be up to the Town to permit it. Mr. Podolski asked why this would not be acceptable. Mr. Cimeno said it is the will of the Town as to whether it wants to have that. Mr. Podolski said this should wait until the language in the amendment is as strong as possible to protect the Town against bed and breakfast establishments advertising themselves hotels. For instance, the Town of Canton has a bylaw that requires off street parking; the Town of Dedham does not have that. Mr. Cimeno said these establishments would have to go to the Zoning Board of Appeals and the Planning Board, and it would have to be approved like any other use. Mr. Podolski said that the neighbors need to understand that there is regulation in place for up to three people, and this is not being changed. This zoning amendment adds a new category for four or more people.

Mr. Cimeno said there are cases in which bed and breakfast establishments have up to three people. He asked if the Board wanted to further limit this or whether they can limit it. He has looked at other state statutes regarding taxation for these, and these can be for up to five rooms, taxed as a single family dwelling. The State has an exemption on the architectural access. Mr. O’Brien asked about serving food, saying this could be a health risk. Mr. Cimeno said this is why they are trying to regulate it for more than three persons. Under the current Zoning Bylaw, there could be a rooming house for up to three persons, and they could be serving food to those individuals. He has not talked to the Board of Health in this regard. As far as he knows, they do not regulate anything along the food lines. Mr. O’Brien said that, besides the tax issues and that benefit to the Town, there is a health risk and disturbance to the neighborhood. He is a proponent for the Town changing the law and putting more restrictions on the street. Mr. Cimeno has spoken with Town Counsel several times, who said that defining it as a boarding/lodging house requires compliance with definitive regulations. Noncompliance could compel someone to stop illegal activity. Up to now, it has been open-ended. The Building Department could go to court, but they may not always be successful. They are trying to create tighter regulations. They have been receiving multiple complaints from the residents, and he wants to find a way to regulate this.

Mr. Bethoney supported Mr. Cimeno’s recommendation and proposal. Mr. Aldous said he was neutral. Mr. Steeves asked where bed and breakfast establishments were located in Town. Mr. Cimeno said they are in different areas of the Town, i.e., Riverdale, near Legacy Place, Precinct One off High Street, off Court Street, and on Court Street. He has not seen any in Greenlodge or the Manor. The most visible one is at 39 Court Street, which advertises as a bed and breakfast. Mr. Steeves said that people come for the historical aspect of Dedham. He asked if these properties were once rooming houses years ago, but Mr. Cimeno did not know since there are no records before 1941. He assumed that it was a single family dwelling. Mr. Steeves said that there are several single family dwellings on Court Street that have a fair amount of history. He said he would think that someone visiting Dedham would want to stay in a historical house. Mr. O’Brien clarified the dwellings. Church Street had a blacksmith shop and a Chinese laundromat. There were a lot of boarding houses, and the area was commercialized. His problem is that 39 Court Street advertises on the Internet as a hotel called French Welcome. Mr. Steeves agreed that they should not advertise as this.

Marie-Louise Kehoe, 858 High Street: She has been working with the neighbors for a few months, and said this is a very serious issue in the neighborhood and an imposition on the residents. *She was very difficult to hear because she was so far from the microphone and spoke softly.* She said that one resident had someone from France knocking on his door, thinking it was the French Welcome. She said this cannot continue. She understood what the Board was trying to do, and said the Town needs to remove this illegal use. If the Town desires, they could be allowed, through the Planning Board, to be located in a properly zoned district. It is, at this time, an infringement on the neighbors due to the traffic and music. She welcomed anything the Board could do to prevent this. She said that the Board of Health is looking into it as a possible violation of their rules and regulations. She said that French Welcome advertises nationally and internationally.

Mr. Podolski said that no district will be allowed to have a lodging/boarding house of four or more unrelated people. This article is the first definition of this type of housing. By putting it at four or more, it is hoped that it addresses the very issue that the neighborhood wants, that it is basically operating a business out of a single family dwelling. This is what the Board is trying to prevent. However, he was not sure how the Building Department would enforce it since there are difficulties enforcing three persons. Proving it is the problem.

Mr. Cimeno said there have not been many problems with boarding houses lately. There have been problems with a couple of properties (Whiting Avenue and another one in East Dedham, which was a long ongoing problem), but it is not prevalent, and he wants to keep it that way. Bed and breakfast establishments have been a new phenomenon recently. They are trying to strike a balance between what is currently allowed and cutting off lodging/boarding houses, which are well defined under State law. He is trying to get clarification from legal counsel on what exactly a hotel is from a licensing standpoint in the Commonwealth of Massachusetts. Hotels, motels, and inns need to be licensed by the Board of Selectmen pursuant to State law, and he is trying to get clarification on that. There is no specific definition as to what a hotel is under the definition of the requirement for an inn holder’s license. It does not give the quantity of rooms or quantity of persons, so he is trying to get clarification from Town Counsel as to what the threshold is. The more tools he has to go to court, the better chance there is to restrain or stop these places; without the tools, he will lose cases. He noted that historical buildings have been converted, i.e., Norfolk Inn. The future may change the bylaw for provisions like these. However, he first needs a good, clear definition.

Tanya Holton, 30 Court Street: *She was very difficult to hear because she was so far from the microphone and spoke softly.* She thanked the Board for the attempt to strengthen the law. She noted that 39 Court Street was a single family dwelling, and has been for a very long time. Mr. Podolski acknowledged that she was the impetus for this amendment. She said understood Mr. Cimeno’s suggestion that the Town will be operating under the existing bylaw of three unrelated, and there will be an additional provision to the bylaw, lodging with four or more unrelated people not permitted in any zoning district. She said she understood, felt comfortable, and that it addressed her concerns. *She spoke further, but* *she was very difficult to hear because she was so far from the microphone and spoke very softly.*

Mr. Podolski said that if this amendment does not work well, it will be re-defined further. There will also probably be the need to further define what makes up a hotel. Mr. Cimeno said that if the State definition says more than five rooms or five or more, he will not have, from a licensing standpoint, the tool to use to fight these. It can be inserted once the State definition is determined. He said that he does not want a judge to say it is not permitted by Dedham’s bylaw, but the State law defines it differently and is contrary to Dedham’s. He said that Town bylaws should stand on their own, but judges look at all the information and come up with a decision. Therefore, he needs as many tools as possible to try to define correctly.

Mr. Podolski stated for the record that the advice of Town Counsel is that the Planning Board can continue to revise and review this warrant article up to the point of Town Meeting even though it has closed the Public Hearing, thereby putting it in the exact format they want for Town Meeting. Mr. Cimeno feels that he can enforce the bylaw at four or more; the Board will do what he wants. He also said that off-street parking needs to be addressed sooner rather than later. Single family dwellings are exempt from the parking bylaw, but not if they are lodging houses. Several years ago, he had asked for a change to require parking for multifamily properties because he felt that there was lack of enforcement in having people who owned these provide off-street parking. There needs to be an enforceable bylaw, and he wants as much clarification in this as possible for legal issues.

Howard Ostroff, 24 Court Street: He said that if anyone wanted to see the conditions and issues with 39 Court Street, they could go to Hotels.com, Trip Advisor, AirBNB, etc., and look at the reviews for French Welcome. He is a Town Meeting member, and asked for clarification on what Article 24 is right now. He asked if it will be amended and whether it would be a prohibition. Mr. Podolski said that, right now, there is no lodging house definition in the Zoning Bylaw. They are adding one at this Town Meeting. The use table shows that it is not allowed in any district. He believes that this amendment will give Mr. Cimeno much more legal authority. Mr. Ostroff said that the other issue is that hotels have no issues with food. Mr. Podolski said they are regulated by the Board of Health. A lodging house would need to discuss this with the Board of Health.

Darcy Lane, 45 Court Street: She lives next door to French Welcome. *She spoke but* *was very difficult to hear because she was so far from the microphone and spoke fast and very softly.* She has received people at her doorbell at night looking for French Welcome. In the General Law, it clearly defines lodging house as “a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it.” *She spoke further, but* *she was very difficult to hear because she was so far from the microphone and spoke very fast and softly.* Her concern is that she does not understand why there is a State law, and something additional has to be put in the Town of Dedham Zoning Bylaw if it has already been identified in the State law. Mr. Cimeno said it is strictly from a licensing standpoint. There may be a violation there right now as to the operation of the building as a lodging house under Massachusetts General Law. When he tries to take things to court, he takes them from a zoning standpoint, and he also informs Town Counsel to take it in violation of every applicable bylaw that is proper. He is trying to get as much enforcement power as possible.

*Mrs. Kehoe spoke, but could not be understood because she spoke softly and at a distance from the microphone.* The question was, if the bylaw passed and is approved by the Attorney General, the Building Commissioner can go to court the next day. Mr. Podolski agreed, saying it is a zoning violation, but the owner of French Welcome has a licensing violation. He said this may result in a two-prong attack: go to the Board of Selectmen for the violation of State law licensing. They could go to the Board of Selectmen and tell them they are in violation of State law licensing. *Ms. Darcy* *spoke further, but could not be understood.* She has brought this to the attention of the Board of Health, and they are working on it. Mr. Cimeno has also asked Town Counsel to put together what this type of entity is and what it is not. If it is before this whole process ends with the zoning change, Town Counsel said he would have to go to court without the zoning issue. If Town Counsel said to wait, he will do so.

Darcy Lane, 45 Court Street: She asked if a husband and wife shared a room; they are technically unrelated. She asked if this would be the case if they were not related to the owner. Mr. Cimeno said there is a definition of family in the Zoning Bylaw that clearly states what a family is. If a person owns the house by himself, or if he leases the house, under the current Zoning Bylaw, he is allowed, by himself, to have three unmarried people living with him. That would be four people in total. If he lived by himself and is the owner of record, lessee, or renter of the house, there would be four people living collectively in the house without a violation of the Zoning Bylaw. This is common. In the case of a husband, wife, and children, this would be a family, and three persons unrelated could live with them as a family. There are other definitions of family and other types of families, i.e., foster children living with a married couple. He reviewed other types of situations and other types of families as well. It is to be noted that the bylaw is not retroactive.

Marie-Louise Kehoe, 858 High Street: She asked whether, with publicity and the neighbors’ testimony, if this would be enough to take them to court, and if the bylaw passes and is accepted by the Attorney General, whether Mr. Cimeno would take them to court the next day. She said that the Board of Health is working on this.

Mr. O’Brien said the owners of 39 Court Street say very clearly what they are, which is a hotel. They get ratings and bookings. Mr. Podolski said Mr. Cimeno needs more before he goes to court. He read Article 24 for the record. He asked Mr. Podolski if he had had the article reviewed by Town Counsel. Mr. McCarthy said they had. Ms. Lane said the definition should be consistent with that of the state stature. Mr. Podolski asked about referring to the state stature, which is in Chapter 62 of the Massachusetts General Law. Mr. Podolski suggested that the following be added: “…unrelated as defined in State law.” Mr. McCarthy said they worked closely with Town Counsel on the language. He said that fine tuning is not always the best way, and he is hesitant to make another amendment.

Mr. Podolski will talk with Town Counsel about the proposed language “as defined in State law.” As he said previously, the Board can continue to revise the article right up to Town Meeting. He suggested that the language be circulated to the neighborhood. This will be put on the April 13, 2017, agenda. They will check in with Mr. McCarthy regarding Town Counsel’s opinion.