

CITY of MALDEN  
BOARD OF APPEALS

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**Minutes of the Board of Appeals Public Hearing  
March 15, 2017 at 6:30 PM**

**John and Christina Markey Malden Senior Community Center, 7 Washington Street,  
Malden, MA 02148**

The Board of Appeal meeting duly called in accordance with the City of Malden Ordinance and its by-laws was held in the John and Christina Markey Malden Senior Community Center, 7 Washington Street, Malden on Wednesday evening, March 15, 2017 at 6:30 p.m.

Members Present: Chairman, James O'Brien; Claire Croken; Deano Summers; John King and Michael Steene

The meeting was called to order by Chairman, James O'Brien at 6:30 p.m. Mr. O'Brien announced that there are five (5) Board members voting this evening and it is required that at least four (4) Board members of the five (5) need to vote for the approval or dismissal of the petition tonight.

**PETITION OF:**

Timothy Dooher, for a variance of Section 800.6.2.29 & 800.6.2.31, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, to appeal the decision of the Inspector of Buildings dated January 24, 2017 to Cease and Desist operation of a rooming house, at the property known as and numbered 47 Acorn St., Malden MA, and also known by City Assessor's Parcel ID #079-353-313. (*Cease and Desist attached hereto*).

The property is described in the Assessor's records as three-family residential building consisting of 3 Units, 4 baths, 1 Half Bath, 16 rooms and 8 bedrooms on approximately 16,151 sq. feet of land.

All statutory notices have been met and this petition is properly before the Board.

Attorney Andrew Tine, 18 Maple Ave., Suite 267, Barrington, RI 02806, appeared before the Board, on behalf of Timothy Dooher, owner of the property known as 47 Acorn Street, and to appeal the decision of the City Building Inspector regarding Malden Zoning Ordinances 800.6.2.29 and 800.6.2.31.

Attorney Tine request the Appeals Board overturn the City Building Inspectors decision and seeks relief under M.G.L. Chapter 40A, Section 3 and under the Fair Housing Act.

Chairman O'Brien indicated to Attorney Tine his disappointment with the Petitioners correspondence, received by the Board last week, stating no interior inspection of the property would be allowed. O'Brien noted this is the standard requirement of Petitioners/Applicants on the day of Board meetings and hearings to afford the Board the opportunity to view the property as it relates to the petitioner's request that is before the Board.

Attorney Tine referred the Board to a confidential affidavit that had been submitted as part of the record for the Board's benefit. As the attorney noted this affidavit gave the Board a perspective on the current occupancy and use of the property by the tenant known as "Rise Above." The confidential affidavit was written and submitted by an individual described as a Manager of "Rise Above" at 47 Acorn Street.

Chairman O'Brien opened the meeting for public comment and asked if there was anyone present that would like to speak on behalf of the Petitioner (i.e.), to overturn the City Building Inspector's Cease and Desist Order.

Nicole White of 575 Lincoln Ave., Saugus, MA came forward and stated she is a Manager of the "Rise Above" occupancy at 47 Acorn Street and is fully supportive of overturning the city Building Inspector's Cease and Desist Order. Ms. White did express displeasure with the manner and way the city's Inspectional Services Department had visited, "shown up" previously to conduct an inspection of the property.

Chairman O'Brien noted that his Board had communicated, in writing, to the Petitioner the requirement for Board of Appeals members to be able to view the property on the date of the public hearing and were informed, by the Petitioner and/or his representative, that no such viewing would be allowed.

Ms. White did indicate that the "Rise Above" occupancy and use at 47 Acorn Street has been inspected by "MASH", (Mass Association Sober Housing) an organization she described that certify properties for use and occupancy as now exists in the subject property.

Board Member, Claire Croken, expressed concern regarding the life and safety of the occupants considering the current use of the property and the existing safety violations stating that it "made her uncomfortable".

After determining no one else was present who wanted to speak on behalf of the Petitioner's request, that portion of the hearing was closed.

Chairman O'Brien opened the hearing for anyone who would like to speak against the Petitioner's request and in support of the City Building Inspector's Cease and Desist Order.

Mr. George Nazzaro of 29 Clarendon Street expressed concerns that the property in question, 47 Acorn Street, is being operated as a Rooming House.

Mr. Charles Ioven of 42 Appleton Street came forward and expressed similar concerns. As an owner occupant of a property within the immediate neighborhood, he was concerned of the obvious rooming house operation at the property.

After determining no one else present wanted to speak in support of the Building Inspector's Cease and Desist Order, that portion of the hearing was closed.

Attorney Tine approached the podium to speak. Chairman O'Brien stated he had every intention of inviting the Petitioner's Attorney up to the podium for opportunity to address the most recent comments from the neighbor's opposition.

Attorney Tine summarized and reiterated his prior testimony that the subject property is currently occupied and being used in a manner that does not violate current Malden Zoning and is allowed under the Fair Housing Act.

John King stated that despite his uneasiness regarding the current use of the property there was no evidence presented by the city or anyone else to dispute the claim that the unit was being used as a sober house and fell under the protection of the ADA. Mr. King moved in support of the petition and to void the Inspector of Buildings decision.

John King made a motion, seconded by Deano Summers, to grant the Petitioner's request to overturn the City Building Inspector's Cease and Desist Order.

Motion Carried -

Vote: O'Brien, no; Croken, yes; Summers, yes; King, yes and Steen, yes

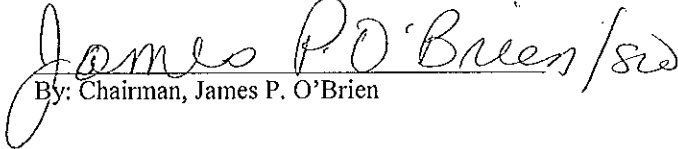
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Deano Summers made motion to adjourn seconded by Claire Croken.

Motion carried - All in favor.

Adjourned at 7:30 p.m.

Respectfully submitted:

  
By: Chairman, James P. O'Brien

Minutes after the meeting adjourned Member Steene approached Chairman O'Brien and expressed concern over the vote he had just recorded, it was not his intent, he misunderstood the motion made by member King. On Thursday, March 16, 2017, Board Member, Michael Steene, made a formal request, in writing, to Chairman O'Brien, for reconsideration of the Board of Appeals vote regarding 47 Acorn Street taken on March 15, 2017. The Petitioner's attorney was informed, by both email and certified mail, that a meeting of the Board of Appeals has been scheduled for Wednesday, March 29, 2017.

**Minutes of the Board of Appeals Meeting  
March 29, 2017 at 6:30 PM**

**John and Christina Markey Malden Senior Community Center, 7 Washington Street,  
Malden, MA 02148**

The Board of Appeal meeting duly called in accordance with the City of Malden Ordinance and its by-laws was held in the John and Christina Markey Malden Senior Community Center, 7 Washington Street, Malden on Wednesday evening, March 29, 2017 at 6:30 p.m.

Members Present: Chairman, James O'Brien; Claire Croken; Deano Summers; John King and Michael Steene

The meeting was called to order by Chairman, James O'Brien at 6:35 p.m. Mr. O'Brien announced that there are five (5) Board members voting this evening and it is required that at least four (4) Board members of the five (5) need to vote for approval or dismissal.

Chairman, James P. O'Brien opened the meeting stating as follows:

The Board of Appeal meets regularly on the third Wednesday of each month. At the March 15, 2017 meeting the Board entertained a petition from property owner Timothy Dooher for his property at 47 Acorn Street. The petitioner's request was for this Board to vote to overturn a Cease and Desist order issued on January 24, 2017 to the property owner by the City's Building Inspector. The petition was granted by a vote of 4 to 1 and the meeting was adjourned.

Within five (5) minutes of the adjournment, Board member Michael Steene, approached Chairman O'Brien and indicated that the vote he had just cast to support the petitioner was an error on his part. Mr. Steene indicated that he misunderstood the motion that had been made by Board member John King and believed that his "yes" vote was supporting the City Building Inspector's order.

O'Brien and Steene discussed the "Reconsideration process option" and Mr. Steene was asked to formally submit in writing his request for reconsideration with 24 hours.

The following morning, March 16, 2017, Mr. Steene emailed his request to the Chairman. The request was time stamped and is part of the record.

O'Brien emailed Attorney Andrew Tine, representative for petitioner/property owner Timothy Dooher, a note informing him, and attaching a copy of Mr. Steen's request for reconsideration. Once this venue and the logistics were finalized Attorney Tine received certified mailing from Board announcing our intention to have this meeting.

Finally, the public meeting on this matter was held on March 29, 2017, the purpose is for the Board to consider the request of Member Steene.

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Member Steene agreed with the Chairman's recollection of the sequence of events.

Chairman O'Brien stated that a motion for reconsideration requires a simple majority vote for the motion to carry.

O'Brien read Mr. Steene's request for reconsideration into the record.

Michael Steene made motion seconded by Claire Croken and the Board voted to grant the request for reconsideration.

Motion Carried – All in favor

Vote: O'Brien, yes; Croken, yes; Summers, yes; King, yes and Steen, yes.

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Chairman O'Brien read the motion made by Member King at the Public Hearing on March 15, 2017 into the record.

John King made motion to grant the petitioners request.

Chairman O'Brien, addressing the Board, made clear that a "yes" vote would be in favor of granting the Petitioners request to overturn the decision of the City's Building Inspector and that a "no" vote would be to deny the petitioners request and support the decision of the Building Inspector.

John King's motion was seconded by Deano Summers.

The Board voted to deny the petitioners request, (vote was 2 members supporting John King's motion, 3 members opposed).

Vote: O'Brien, no; Croken, no; Summers, yes; King, yes and Steen, no.

There was discussion between the City's Attorney, John McNaught and the Petitioner's Attorney, Andrew Tine regarding the number of votes required by the BOA to overturn a vote being reconsidered.

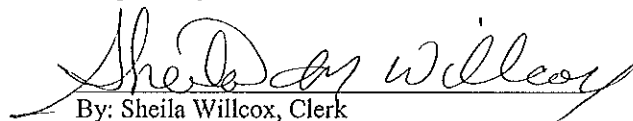
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Mike Steene made motion to adjourn seconded by Claire Croken.

Motion carried - All in favor.

Adjourned at 6:55 p.m.

Respectfully submitted:

  
By: Sheila Willcox, Clerk