

**COMMONWEALTH OF MASSACHUSETTS**

**NORFOLK, SS**

**IN THE MATTER OF:** Bryn Smith  
Petitioner

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TOWN CLERK

*30 Day Appeal  
Date August 9, 2011*

**OPINION OF THE BOARD**

**REQUEST FOR APPEAL  
9 Broad St.**

Hearing: May 25, 2011

Decision: June 15, 2011

**MEMBERS PRESENT:** Joseph F. Musmanno, Chairman  
David Cole  
Anthony Biocchi  
Peter Gluckler, Jr.  
Carol Gould

**THE WRITTEN OPINION WAS DELIVERED ON JULY 20, 2011**

## **OPINION OF THE BOARD**

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law C40A, as amended, in which the petitioner, Bryn Smith, appeals the March 8, 2011 decision of the Building Inspector to deny building permits for alterations to, and multi-family use of, 9 Broad St., Medway, MA 02053.

### **Hearing**

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on May 11 and 18, 2011. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11.

The Public Hearing was held and the record closed on May 25, 2011. Deliberations continued to June 15, 2011. At the hearing, three persons spoke in favor of the appeal, no one spoke in opposition.

### **Hearing Summary**

Mr. Bryn Smith submitted an application of Appeal on April 26, 2011 of the Building Inspector's March 8, 2011 decision in which building permits for the alteration to, and multi-family use of, 9 Broad St., located in the CIII zoning district. Mr. Smith plans for alterations of the building to the existing four residential units continue its multi-family use. When application was made for the alterations, the permit was denied. The Building Inspector indicated that he could not find any proof of legal multi-family use, and therefore, could not issue permits. Mr. Smith submitted evidence of multi-family use in the form of building permits issued by the town in 1985 and 2003, as well as 1975 tax records. At the hearing both Mr. Smith and Mr. John Emidy, Building Inspector, were present. The April 26, 2011 application of Appeal and Mr. Emidy's March 8, 2011 letter of denial were read into the record. Mr. Smith stated that he did not wish to present any additional documents other than those previously submitted, which were also presented to the Building Inspector before or after the denial of the requested permit.

Mr. Emidy stated in issuing the early building permits, his predecessor would not necessarily have looked at all the records and might have assumed that the subject building was a pre-existing non-confirming building. His research contended that the building was a single family dwelling when zoning was adopted and that the Assessors' 1975 tax rating did not necessarily reflect Town Zoning.

Several members of the public spoke and gave testimony indicating knowledge of multi-family use as far back as 1972. Mr. Gregory of 33 Broad St. spoke in favor of the

appeal stating that there are numerous multi-family dwellings in the area, including his own, and by the standards being applied in this appeal he might have difficulty establishing that his own dwelling was legitimate especially given the age of the homes in the neighborhood. Mr. Heavy of Sanford St. gave testimony that his family lived in the subject building and moved out during WWII at which time the building was a single-family dwelling.

By unanimous consent, the hearing was closed. In deliberation, the Board found that it was satisfied that multi-family use was established by July 8, 1975 by evidence of the tax record submitted. After discussion, further research into the history of zoning in Medway was necessary in order to establish enactment of zoning in this area prohibiting multi-family use. The matter was tabled to June 15, 2011 to allow research into the matter.

On June 15, 2011 deliberations opened with Mr. Cole and Ms. Doherty, Secretary, reporting historical items found in Town Resident Listings and Annual Reports obtained from the Town Clerk revealing multi-family use as far back as the early 1950's and prior to the 1968 enactment of the zoning by-law prohibiting multi-family use in this district.

**Findings:**

By vote of 5-0:

1. The Board finds the current multi-family use is pre-existing, non-conforming.


**Appeal Upheld:**

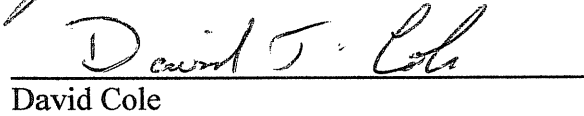
By vote of 5-0:

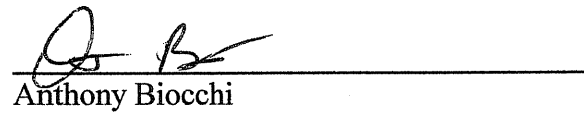
The Board upholds the Appeal, reverses the decision of the Building Inspector that the building must remain a single-family dwelling and remands the matter to the Inspector for further proceedings consistent with this opinion.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the Office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

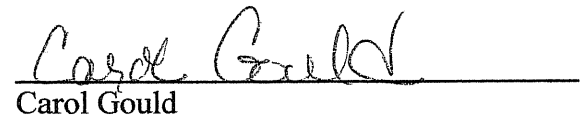
***IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.***

  
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Joseph E. Musmanno, Chairman

  
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David Cole

  
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Anthony Biocchi

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Peter Gluckler, Jr.

  
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