

DRB Hearing

June 28, 2023

Appeal of Zoning Administrator

DRB Members: Sam Stone, Bob Clark and Jim Desmarais

Others in Attendance: Linda Grace, Benjamin Putnam, Lyn DesMarais, Brent Buhler, Chris Conlin, Erica Zimmer, Jesse Murdock, Jeff Biasuzzi (Zoning Administrator), Hillary Knapp (Clerk)

Hearing was opened at: 7:01pm

Interested Party Requested: Jeff Biasuzzi, Jesse Murdock, Benjamin Putnam and Erica Zimmer (current owner)

Jim: I have had ex parte communication sharing some early papers with Linda, but nothing that would hold me from being impartial during the hearing.

Linda Grace: Presented a PowerPoint (exhibit A) on appeal of the zoning administrator's determination. The exterior to 12-14 Conant square was shown. Both are historic structures and are a part of the historic downtown. These questions arose when the fuel tank was removed from the basement to the outside of the building. A LOMA did not exist when the presentation was prepared, and we are not sure if this area would be considered a flood zone. There is no firm determination if the property is in the flood zone. I have emailed FEMA to determine if the building is in or out of a flood zone, FEMA explained that the flood zone maps online determine the certain towns risk. A LOMA is needed to be obtained to determine if it is in a flood zone. The fuel tank is right outside of the kitchen door of my property.

Jeff: How much time did you take to put all this together?

Linda: 50 to 60 hours to put the information together.

Jeff: The major question here is if the building is in the FEMA flood plain mapping and there will be new mapping that will be coming out. The base flood elevation has not been documented and have not been since 2018. The maps are based on 20-foot vertical elevations and the new maps can show 1-foot contours. FEMA has not adapted the new mapping as of now. The new mapping would show between 8 to 10 feet of elevation between base and the fuel tank that is involved. There is information from the flood plain manager that details that the elevation difference from before 2017 and now. The physical evidence based on today's technology is that the property is above base flood elevation and the flood plain is not applicable in this situation. If not for the flood plain rules the fuel tank would not be a structure it is an appliance and is under the footage to be considered a structure. It is not uncommon for people to maintain heating structure and do not need to go to the zoning administrator unless it is a certain size. The building itself and what was permitted is another issue involved. These are ones the current zoning administrator was not involved in issuing these permits.

Sam: We as the DBR have a pretty limited role in what we do. We are hearing an appeal of the zoning administrator's decision. What is the appeal we are hearing specifically?

Jeff: There is a request in the packet, in this case Ms. Grace asked for a determination of the tank, the deck, the stairs.

Linda: There was nothing permitted for the above-mentioned items on the property at 12-14 Conant Square.

Jeff: The request for a determination and the appeal of the determination is what is requested.

Sam: A determination of?

Jeff: Of past zoning permits compliance. We are going back more than the 15 years in this request which is not the norm.

Jim: On the fuel tank, do you agree that if it is in a flood zone that it is a structure?

Jeff: The zoning regulation say above ground fuel tanks, there is not a min or max threshold for the tank. Under the BLUO, if it is in the flood hazard area, then it is a structure and would be treated accordingly It would have required a permit, in that area.

Jim: Who makes the determination if it is in the flood zone?

Jeff: FEMA determines base flood elevation; one can go to the expense of hiring an engineer to come up with if it is in the flood zone. With 20 vertical feet in determination, this is where the error can occur. How you determine if it is in a base flood zone, you can see it in the correspondence from Kyle Medash and he has pulled in information from the flood maps and can be determine it from a surveyor and the flood zone administrator. FEMA ultimately has the decision after the surveyor has made the maps. A LOMA would need to be provided to change the flood map. There has not been a statewide map review in quite a long time.

Linda: To get FEMA's official determination you need to receive a LOMA. The flood maps are not for individual properties.

Jim: The oil tank issue, the decks issue and the addition issue. On the structure back on the 90's it was required to be taken town, back in 2017 it was required to be taken down?

Jeff: I do not have anything except what was in the file.

Jim: The decks question, in 2017 there is a DRB approval for reconstruction for interior and exterior? I do not know what the DRB was looking for in the plan.

Jeff: You have everything in your packet that the DRB has seen in the original permit request.

Jim: If the board saw that there were decks in the back at that time, it would be important to know what they were looking at.

Ben Putnam: What the permitting was and what the project was, it would be beneficial to hear from Chris Conlin as the contractor? Provided Exhibit C.

Chris: 12 to 14 I redid from skeletons and made sure that everything that needed to be done was done and did all that was asked of me. There was an 8-foot outbuilding and had a set of stairs that was a fire escape. The water line comes into the corner of the building at the basement and the water line broke that went into the basement. The lower left side of the building at the corner is where the waterline went into the basement.

Jim: What year was this?

Chris: That was in 2019

Exhibit A (in exhibit C) in the packet was from 2016.

Jim: There was an attachment that was to be removed in prior DRB?

Chris showed where the structure was removed on documents provided.

Ben: The permit that Kate applied for in 2017, was to turn exhibit a into exhibit b and did the project include the deck work?

Chris: Yes, we had to have it inspected by the state because it was a commercial building and to make sure it was all to code. She applied to do this historically and ended up hitting red tape due to some issues with the windows.

Ben: If you can turn to Exhibit K.

Chris: The concrete beneath the bottom deck is structure, the pounding of the road had turned the concrete. We had to add buttress to the bank to stabilize.

Jim: Exhibit K, shows one set of stairs on the back and there are also stairs on the back that are not shown in exhibit k. When was the additional set of stairs added to the building?

Chris: The deck was to replace the existing deck that was on the building.

Ben: We do not know if these plans were submitted to the DRB, this is to show what Chris was working from. The deck that Chris is talking about was to replace a previous deck.

Linda: I did find an old document when Mrs. Briggs was renovating the properties for historic purposes, there was a comment that the base flood elevation did not determine for historic purposes. Storage tanks and decks are not defined in the BLUO. The moment you move to a historic building in the downtown it changes everything. If we are saying a storage tank does not require a permit than anyone can move them from their basement.

Bob: Isn't there another storage tank that is behind the building?

Linda: There is one behind the bookstore that is strapped down. There is a 275-storage tank that is above my property and that my house is right downhill from it.

Jesse: The reason it was put outside is that the fuel company could not get a new fuel tank inside the building. The old fuel tank had to be cut out of the basement to be removed. There is another one that is on the other side of the building at 12 to 14 Conant square.

Chris: There used to be a door into the basement and that is how the old tank was able to get into the basement and the door has been removed.

Sam: How is the tank secured?

Chris: The new tank is on a new pad. The pads can be full code size, there are 4 pads that meet the size of an individual pads and there is a hook in one of the pads. That is how the fuel company brought the pads into property.

Sam: It does have the ability to be strapped down?

Jesse: Those are carrying hooks.

Sam: Could you explain how the tank was installed and who installed it?

Jesse: It was installed by Marcell Fuels. As part of the sale of the building, we had our own inspection, and we were told that the tank had deteriorated and needed to be replaced. We had decided to replace it before the closing with Erica to replace the tank. Marcell's could not replace the tank in the basement and had told the us that they did this up to code. I have talked to them about this issue, and they are adamant that no permit was required here.

Linda: The information I received was from Marcell and saw them installing the tank and they gave me the information. The building is a commercial and rental building, is there some type of requirement for heating fuel and maybe we are in the wrong department to have a permit required?

Jeff: There is no need for a permit from the town. The question would be from the fire marshall. The strapping of the fuel tank in flood zone would be in FEMA requirements. The tank must be secured to the floor is a new requirement. The strapping down of the fuel tank would be a fire marshall question.

Jesse: We passed the extensive fire marshall inspection.

Erica: When I was getting a loan through my lender or my insurance, neither determined that it was in a flood zone and it was not a requirement of my loan to obtain flood insurance.

Ben: You are right that we have to look at the zoning issues here and the tank is not a zoning issue and I think that Jesse is willing to make updates to the fuel tank. With the historic area, I am not aware of the tank needing a special permit as it is below the size that would need it. The flood zone is an important question and looking at all the evidence the Town did not determine that it was in a flood zone. When Kate presented that permit application, that would be when the Town would have made the determination that it was in the flood zone. The DRB did not impose any flood requirements, and I believe that this ship has sailed. If someone updates the FEMA maps, it could end up in a flood zone in the future. Erica's lender confirmed that it was not in a flood zone and at this point it is not the burden of the landowner to show that it is in the flood zone. If new mapping comes out, any further changes would be determined by that. The changes that were made in 2017, the first is that the Town has repeatedly looked at this property and made determinations: the first was for a refinance and it was determined no zoning issues, and when Ms. Grace purchased her property there were two letters on two different issues that there were no issues at that point. Once a zoning determination has been issued there is a certain time requirement to appeal the decisions or the letters. In our view it is too late to bring up the zoning issues at this time.

Linda: There were actually two letters last year during the sale of the property, they were done in conjunction with 12-14 Conant Square. The 1st was for both letters and the 2nd was to show the properties were split in 1996. It is not that I have been waiting for an opportunity, when the tank was installed was when this started to see what my rights were as an abutter.

Jeff: To clarify that the addition we are referring to in the 2017 permit has been removed?

Chris: The addition on the back went all the way back to the gable. The foundation could not be removed.

Hearing was closed at 8:16pm