



TOWN of BROOKLINE

Massachusetts


BUILDING DEPARTMENT

Daniel F. Bennett
Building Commissioner

INTEROFFICE MEMORANDUM

Date: December 19, 2019

To: Members of the Zoning Board of Appeals

From: Daniel F. Bennett
Building Commissioner 

Re: 12 Euston Street – Appeal of Airbnb violation

The appeal in front of this Board has to do with use and whether or not Use #51 that states in part; “Within a dwelling unit, the renting of not more than two rooms as a lodging without separate cooking facilities and for not more than two lodgers...” allows for short term (transient - less than 30 days) rentals similar to Airbnb.

It is my position, and that of my two predecessors, that Use #51 has been interpreted to permit only long term rentals (non-transient - greater than 30 days). I understand the by law does not specifically reference the non-transient nature of the lodger. I would suggest the Board give deference, as the Courts do, to the Town on the non-transient interpretation since this has been the practice since at least 1988. The purpose of this use was to allow residents living in a dwelling, in any district in Town, to rent two rooms to two lodgers – a long-term use. The most common types of long term tenants would be college students and young professionals. The more recent short term rental use, such as Airbnb, was never anticipated when this provision was adopted as part of the by law (sometime prior to 1969).

In addition the Brookline Zoning by Law is one of inclusion. If the use is listed (included) in the Table of Use Regulations it is permitted, if it is not listed it is not permitted. The use of a dwelling unit for short term rentals (transient - less than 30 days) is not permitted in Brookline because it is not listed in the Use Table. Use #51, as interpreted by me and previous Building Commissioners, does not constitute a customary home occupation or home office. It is simply a property owner acting as a landlord to rent out a room. This happens all over town and is an accepted practice.

What is different +30 or <30

By overturning the current interpretation to include short term rentals with nonresident employees and client/customers visiting the dwelling, the new Use #51 would conflict with other provisions of the by law regulating accessory uses, home occupations and office within a residence.

Town staff, including Planning, Building, Health, and Fire Departments, the Select Board and Town Counsel's office have been working on a comprehensive set of short-term rental regulations (Zoning and General by laws). If the Zoning Board chooses not uphold my interpretation of Use #51, the short term use would be permitted as of right and any future by law change would make the use preexisting nonconforming and our ability to regulate would be greatly diminished.

2

only the ~~the~~ plain reading applies
if there is no ambiguity

Marsha Lapson

Carol Capper #2 12 EUI m

Capdo rules - business - strangers not vetted
what if bad tenant?

Anne Alberger 29 Division TMM Pt. 1

Pct. 1 Paul Warren reiterate what Anne said about
not wanting it in their building

Bohmer - Policy uncomfortable dealing with pending regulations
thinks this is terrible in neighborhood and very inconsistent. Impass stream of transients
- separate from whether it is permitted.
bring up in meeting - it is use and occupancy as permitted or better
it is suggested - not a lodging or rental

EXHIBIT B

TOWN OF BROOKLINE BOARD OF APPEALS APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

(See M.G.L. c. 40A §8, BOA Rules and Regulations, and Zoning By-laws §7.03.2.e)

Date: 6 / 10 / 19

Applicant(s): HELENI THAYRE Address: 12 Euston St. Unit #3
Brookline, MA 02446

Owner(s) of
Record: HELENI THAYRE Address: 12 Euston St. Unit #3
Brookline, MA 02446

Address of Premises: 12 Euston St. Brookline, MA

Deed recorded in Registry of Deeds, Book 1039 Page 50

or registered in the Land Registration Office under Certificate No. _____

Tax Assessor's Property ID No.: Map: 2015 Block: 001 Lot: 13

1. What are you appealing and why? Is it an inability to obtain a building permit, enforcement action, order or decision of the Building Commissioner/Building Official? (Please attach copy)

Appealing the attached Notice of Violation

2. Are you within the 30-day appeal period (M.G.L. c. 40A, §15)? Yes ☒ No ☐
Notice of Violation extended to June 29, 2019 (See attached)
3. Provide the grounds for the appeal and legal reasons why you assert that the order or decision is legally not valid. (Please attach copy)

Air B&B of a bedroom in an owner-occupied unit is not governed
by Use #7 (lodging house) but by Use #51 (renting of not more than
two rooms to a lodger within a dwelling unit). The definition of "lodger"
in 32.12.3 does not include a minimum stay requirement.

4. What outcome do you request if your appeal is upheld?

That applicant be allowed to re-list her extra bedroom
on Air B and B for short-term rentals. The current order
is depriving applicant from such rental income over the summer
high season for tourists to the Boston area.

Certification and Signatures

(Signatures of Appellant(s) and Owner(s) of Record (if different than the appellant) are required.)

The original Application with ten (10) complete copies of the application and supporting documentation to include: a copy of correspondence requesting action by the Building Commissioner/Building Official, his response (if applicable) and copies of all other pertinent information must be filed with the Zoning Coordinator in the Planning and Community Development Department. Once the application is deemed complete and the appropriate fee is paid, the Zoning Coordinator will transmit to and file with the Office of the Town Clerk four (4) copies of said complete application. Note: You are encouraged to discuss your application with Building Department Staff and thoroughly familiarize yourself with the Board of Appeals Rules and Regulations before submittal to insure the thoroughness of your application. Copies of the Rules and Regulations are available at the Office of the Town Clerk and also on-line at both the Town Clerk and Board of Appeals links on the town website. After the Board of Appeals hearing is set, the Planning Board (if applicable) may hold a meeting prior to the Board of Appeals hearing to consider the case and make a recommendation to the Board of Appeals. Contact the Building Department (617-730-2100) with any questions about the appeal process and/or meeting schedules. Also see meeting calendar on Town website at: www.brooklinema.gov.

I (We) hereby certify that I (we) have read the Board of Appeals Rules and Regulations and that the statements within my (our) Appeal and attachments are true and accurate to the best of my (our) knowledge and belief.

<u>Heleni Thayer 6/7/19</u>		<u>617-232-8180</u>
Signature(s) of Appellant	Date	Daytime Telephone Number and/or Cell
<u>Heleni Thayer 6/7/19</u>		<u>heleni22@verizon.net</u>
Fax Number		E-Mail Address
<u>Heleni Thayer 6/7/19</u>		<u>617-232-8180</u>
Signature(s) of Owner of Record	Date	Daytime Telephone Number and/or Cell
<u>Heleni Thayer 6/7/19</u>		<u>heleni22@verizon.net</u>
Fax Number		E-Mail Address

If Applicable:

Scott Gladstone
Name of Attorney for Applicant

617-730-4525
Phone Number of Attorney

822 Boylston St. #300, Chestnut Hill, MA 02467
Address of Attorney

sg@sgladstonelaw.com
E-Mail Address and Fax # of Attorney

SUBMIT THIS FORM (original) WITH TEN (10) COPIES OF THE APPLICATION, FILING FEE AND SUPPORTING DOCUMENTATION TO THE ZONING COORDINATOR



TOWN of BROOKLINE

Massachusetts

BUILDING DEPARTMENT

Heleni Thayre
12 Euston #3
Brookline, MA 02445

May 10, 2019

RE: 12 Euston St. #3

NOTICE OF VIOLATION

Dear Owner,

A complaint was made in regard to the premises you own at **12 Euston St.** It was brought to the Town's attention that you are renting your property as an Airbnb. This was verified by searching properties on Airbnb.com's website and finding your property listed for short term rental. This is a violation of the Town of Brookline's Zoning By-Law and is not permitted.

Zoning By-Law Ch 4:

Permitted Use #7 Lodging House requiring Special Permit.

REMEDY:

Immediately remove your property in the listings of Airbnb.com

Failure to comply with this notice within thirty days (30) of receipt of this notice will result in fines of \$1000.00 per day for each day the violation exists (MGL 143 §§ 94a) as well enforcement actions through MGL 146 §§ 6 through 12, and court action.

Your immediate attention to this matter is appreciated.

Respectfully,

Robert Dougan

Building Inspector

CC: Dan Bennett. Building Commissioner , Joseph E. Braga. Deputy Building Commissioner