

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of October 18, 2012 at 7:00 p.m. @ Harmony Hall, 1660 Lakeview Avenue, Dracut.

2012-28 @ 12 Clyde Avenue – Appealing the decision of the Inspector of Buildings dated August 3, 2012 ordering her to return the property to its use as a single-family home. Petitioner: Michelle P. Hultgren.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Neil J. Kelly, Professional Land Surveyor dated October 7, 2011.

Attorney John Cox will be representing Ms. Michelle Hultgren. They are appealing a decision of the Building Inspector in a letter dated August 3, 2012 (copy attached) ordering Ms. Hultgren to return 12 Clyde Avenue to its proper use as a single family home. Chairman Crowley read the letter into the record. Attorney Cox stated Ms. Hultgren purchased the property in question on October 17, 2011 as a two family home. It was marketed, appraised and being taxed as a two family home. He has had many conversations with Mr. McLaughlin, Building Inspector and stressed how helpful, open and willing to listen to them he has been. Mr. McLaughlin based his decision on the fact he was not able to find in the town's records any building permit or any decision of any board pertaining to the fact that 12 Clyde Avenue is a two family home. Attorney Cox feels that this case is a little different than most cases that come before the Board.

Attorney Cox stated the property was conveyed to Ms. Hultgren by Doreen Normandin and Wendy Mack who are both descendants of the Gunther family who owned the property originally. He spoke with Wendy Mack who informed him that her earliest recollection of that home in the early 1960's is that of a two family home. A research back through the Registry of Deeds shows that the Gunther family owned 6 Clyde Avenue that later became 12 Clyde Avenue from at least the 1920's. Ms. Hultgren went back through the old registers that cities and towns use to have in the old days that listed everyone who lived in the city or town and their address. Attorney Cox presented copies to the Board. A register from 1927 shows that Herman Gunther, Mary Gunther and Mrs. Annie Simpson lived at 6 Clyde Avenue. In 1930-31 there is a listing for Herman Gunther, Mary Gunther and Mrs. Annie Simpson at 6 Clyde Avenue. In 1940 there is a listing for Herman Gunther, Mary Gunther and Mrs. Annie Simpson at 12 Clyde Avenue. Attorney Cox also presented an obituary from February 1945 for Mary B. Gunther making her home at 12 Clyde Avenue and listed being survived by a sister Mrs. Annie Simpson with whom she made her home and also listed two brothers Ernest and Herman Gunther both of Dracut. The obituary shows that in 1945 when Mary Gunther died the three of them lived together at 6 then became 12 Clyde Avenue. A register from 1949 show that Herman Gunther and Annie Simpson were still at 12 Clyde Avenue. A reasonable deduction one can make from these documents is that in the 1920's, 1930's up to 1945 three siblings lived at 12 Clyde Avenue. In 1945 this was a two family home with Mary Gunther and Annie Simpson in one apartment and Herman Gunther in the other.

In doing a zoning review, Attorney Cox stated that in 1945 the Town of Dracut adopted the Zoning Laws which talk about single residence and general residence. General residence talks about one and two family dwellings. This shows that the Town of Dracut recognized two family homes. There was nothing in the code in 1945 that would require someone converting a home from a single family to a two family with a permit. In 1953 the by-law changed requiring a permit to convert a home from a single family to a two family. Their position is that it was always a two family home. The Gunther family three siblings lived at this address as mentioned in the obituary. It is a little different from what the Board would normally see and he thinks it does make sense. There was a permit issued in 1965 at 12 Clyde Avenue for what appears to be an alteration on the home with no further explanation. They feel this was not converted from a single family to a two family through an alteration permit, but that it has always been a two family from the research that has been done and presented.

Mr. Hamilton noted that Board had only heard about the dwelling as a single and a two family, but did not hear anything about the accessory use of the garage mentioned in the letter and asked if this was also under appeal. Attorney Cox stated the garage issue was not being appealed at this hearing.

Mr. McLaughlin, Building Inspector stated that no one is accusing Ms. Hultgren of any devious acts as this is something that happened long ago. He presented a package of information to the Board. It came to his attention through a disgruntled tenant and they have a right to know if there is a zoning violation on the property they rent. He investigated and did not find anything. He did find the Assessors record from 1965 discussing Lot 2 and part of Lot 1 at 12 Clyde Avenue showing a single dwelling and in the 1966 record it became a double dwelling. This sort of ties in together with the building permit issued in 1965 that authorized the change. Mr. McLaughlin is assuming that is when the conversion took place. Mr. McLaughlin noted that currently the Assessors records say it was built in 1940. He found an earlier record prior to 1965 that shows Lot 2 and Lot 1 as a combined lot with only one building on it. It showed that Lot 1 and 2 had 26,000 square feet, but now shows both of them with 13,000 square feet. Lot 1 is on the corner of Sladen Street and Clyde Avenue with Lot 2 at 12 Clyde Avenue. He is not sure which lot 6 Clyde Avenue was originally in. There was further discussion on the information presented. The information he presented is what Mr. McLaughlin based his decision on.

Attorney Cox thinks there is an old plan from 1916 that refers to all the smaller lots first of all. Secondly, as far as the difference in the assessment of the property in the mid 60's, it is their point of view this confirms their argument that this was a two family house from very early on back to the 1920's. They feel the reason it was changed in the mid 60's was when the town finally caught up with during a review of the property. The home being talked about today at 12 Clyde Avenue was the same home that the Gunther's lived in back in the 1920's as shown by the registers. Chairman Crowley noted that these registers were the address directories that were put out primarily as an advertising medium so people would buy them and are not representative of the Town of Dracut nor the Registry of Deeds. Attorney Cox agreed.

Mr. McLaughlin believed it was changed in 1965/1966. He did a site visit recently and there were several red flags with the construction at 12 Clyde Avenue. The egress to the

second floor is a deck with interior stairs that were built for a reason, but not for a two family. Even if it was being converted, you would not have a door going through a bedroom closet. He has no issue with the structure as is, just its use as a two family. There is no evidence for a properly conversion to a two family. He also contends that it was not built until the 1940's as per the current Assessors record and presented copy to the Board. Mr. Hamilton asked if there are two kitchens and two bathrooms. Yes! He then asked if there were any plumbing permits pulled for this work. No! Mr. McLaughlin noted that the lack of a building permit by itself does not prove anything, but you would look at the structure as it was built. Chairman Crowley asked if the renovation permit that was pulled in 1965 was done under some then existing state building code. Mr. McLaughlin noted that this was a good question. Dracut certainly had a town building code as early as 1927, but there was no state building code until 1975. It was uncertain what they would have used as a building code in 1965. Chairman Crowley was curious to hear Attorney Cox's response to the initial presentation by Mr. McLaughlin about what happened to 6 Clyde Avenue and the two pieces of property. Chairman Crowley thinks it is reasonable, seeing the square footages and the change from a 26,000 square foot lot to a 13,000 square foot lot, would seem to indicate some type of subdivision and may explain why it went from 6 to 12. Attorney Cox stated the first survey plan on record that was found goes back to 1916 and the next one happened in the year 2000. There is nothing on record as far as the Registry of Deeds is concerned that show any other survey that was done. Chairman Crowley noted again that the lot size changed as seen on the record from 26,000 to 13,000 square feet. Attorney Cox was not aware of the lot size change and referenced the registers that he presented previously showing the three siblings living at 6 Clyde Avenue then 12 Clyde Avenue.

Mr. Hamilton asked what use is being made of the property right now. Ms. Hultgren-Cooper stated she was renting since she purchased it as a two family. She does not live there and rents out both. She purchased the property as a two family. At the time she purchased the property all records indicated it was a two family, such as the listing, the town records, the real estate office, etc. She had a letter from an appraiser stating it was a two family. Mr. McLaughlin stated he had asked Mr. Hultgren to ask the appraiser how he could make that statement. To date there has been no response. The appraiser writes was built in 1940. Mr. McLaughlin noted that the appraiser never came to the Building Department to ask if it was a two family. Chairman Crowley noted that if the appraiser does the research and proposes that everything he can find indicates it is a two family, there would be no reason for the purchaser to believe it was anything other than a legitimate two family. Mr. McLaughlin agreed.

There was further discussion about 6 versus 12 Clyde Avenue and a house being built in 1920 versus 1940. Mr. Hamilton's understanding of what Attorney Cox was intimating is that 6 Clyde became 12 Clyde Avenue just by a number change with Chairman Crowley thinking the same and 6 Clyde was in dwelling since 1927. Now it looks like the building at 12 Clyde is a 1940 building and not 6 Clyde just having a number change. Mr. McLaughlin noted that the question was raised about the other part of the lot that was split did not add up to 13,000 square feet, but he presented evidence that it has 13,421 square feet. The address now is 195 Sladen Street with a building on it and he would guess it was built in the 1950's. It is very difficult to determine what happened to 6

Clyde Avenue. Chairman Crowley noted there is some degree of speculation involved with this. After further discussion, Attorney Cox noted that he believes there are extenuating circumstances with this case that could allow this Board to grant in favor of the petitioner.

Abutters: Who came forward in favor or in opposition?

Karen Merrill, 7 Clyde Avenue – She stated that her house is a Gunther house as well and she could not find anything showing when it was built. She noted there were several other two family homes on the street and was wondering if Mr. McLaughlin was going to check them also. Chairman Crowley stated that Mr. McLaughlin was not going to answer that nor does he have to as it has nothing to do with this case. She does not feel it is fair. Chairman Crowley asked if she has a single family home or a duplex. Single family!

Kathy Anderson, 194 Sladen Street – She has lived at this address for 51 years and her father owned the house previously for 45 years. It has been in her family for 120 years. Her father told her that the house at 195 Sladen Street has been there since 1957 owned by the Gunther's. The house behind it in question from his recollection has always been a two family. Ever since she has lived there it has been a two family. Chairman Crowley feels there is not any doubt that it has been a two family for quite a period of time and does not think that is being debated. Even going by the Building Inspector's recollection it has been at least for the last 50 years as seen by his own evidence. The question is did it preexist and was it an allowed use or a permitted use at the time and was it a legally built as a duplex. There was further discussion about the addresses and lot sizes.

Andrea Carbone, 18 Waldo Street – She asked if there is some kind of clause in law or building construction that if something is zoned as a two family for a number of years and, especially in this case, where there is no proof that it wasn't a two family conversion in 1965 that it would be protected. Chairman Crowley answered no, but noted what it does say is you are protected with regards to the property or structure but not to the use. For example, if the Board found in favor of the Building Inspector, the Board could not have the building torn down, but could request that it be returned to its original design use as a single family. There is no statute of limitation or whatever that would allow you to do that.

Ms. Hakkila asked if the house was built so there is a stairway going down inside internally from the second to the first floor and also a stairway outside the house going down from the second to the ground floor. Ms. Hultgren answered there is a stairway going from the second to the first floor onto the porch. As you walk into the porch there is the door to go upstairs right in front of you and if you go around the porch to the right there is a door to the first floor. There are two entrances on the porch, one to upstairs and one to downstairs. There is also an outside set of stairs from the second to the ground floor. As far as Ms. Hultgren knows, the porch was original with the house. Ms. Hakkila noted that the stairs could have been put on due to a fire law when they made it into a two family and originally been a one family.

A motion to close was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to close.

A motion to Uphold the Decision of the Building Inspector was made by Mr. Scott Mallory and seconded by Mr. Stephen Hamilton. Chairman Crowley noted that he would like to see overriding evidence that in fact this was not at some point a duplex, but really does not see that much evidence to that effect. However, based on what the Building Inspector had to go by, he thinks the evidence that Mr. McLaughlin has used is more substantial than what has been shown contraindication of his decision, but he is open to further discussion. Ms. Hakkila is torn as the inside stairway within the porch indicates it was originally built as part of the house and a way to get to the upstairs. If the only stairway that was within the house went down the middle of the house, then she would think it was built as a single family with an upstairs to it. The evidence is so scanty that no one really knows when the stairway from the upstairs to the ground floor outside was built and if it was built because the fire code changed or if it was built initially to get a second way out of the upstairs. She feels if the Board does not have the evidence it is hard to make a judgment, but feels you have to go by the by-laws. She does not think the petitioner has proven their case. Mr. Mallory noted there was a reference on the building permit that was included with the Building Inspector's packet that shows the alteration that was put in reflects some sort of building being only 8x12 in size which could be the size of a porch. Chairman Crowley noted that either way the vote goes, this is a very narrow case and he can see where anyone would vote in either direction and thinks that Attorney Cox and the Building Inspector McLaughlin both understand that a lot of this is based on opinions. Chairman Crowley feels that the evidence presented is not overwhelming in either side of this case; however, he generally will give the benefit of the doubt to the Building Inspector's research because he knows that the Building Inspector does not try and create a situation where we penalize people for preexisting structures for buildings. That being said, he is inclined to vote in favor of supporting the Building Inspector, but in his estimation he would feel much better about that decision if there was much more evidence on his part. He thinks the Building Inspector has done the best he can and the Attorney and his client as done the best they can to prove their point of view. Those voting in favor to Uphold the Decision of the Building Inspector were Mr. John Crowley, Ms. Ina Hakkila and Mr. David Meli with Mr. Stephen Hamilton and Mr. Scott Mallory voting against. The motion passed on a three (3) to two (2) vote.

Acceptance of Minutes:

A motion to accept the September 20, 2012 minutes was made by Mr. Stephen Hamilton and seconded by Mr. David Meli. The Board voted unanimously to accept the minutes with Ms. Ina Hakkila abstaining.

Next Meeting:

The next meeting will be Thursday, November 15, 2012.

Adjournment:

A motion to adjourn was made by Mr. Stephen Hamilton and seconded by Mr. David Meli. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Ina Hakkila

Member, David Meli

Alt. Member, Heather Santiago-
Hutchings

Absent
Alt. Member, Michael Pagones