

Petitioner: Joseph Azzolino
Case No. 897A
Date Filed: May 24, 2018

The Littleton Board of Appeals conducted a public hearing on June 21, 2018, continued to July 19, 2018, at the Shattuck Street Municipal Building on the petition of Joseph Azzolino to appeal the Building Inspector's Decision of May 10, 2018, expressing a determination that the property at 169 King Street, Littleton, Massachusetts is a single family residential dwelling. Notice of the hearing was given by publication in the Littleton Independent, a newspaper published in Acton and circulated in Littleton on June 1 and June 28, 2018 and by mail to all abutters and parties in interest. Present and voting: Sherrill Gould, Chairman, Members, Cheryl Hollinger, Rod Stewart, Alan Bell, and alternate, Jillian Shaw. Present and not voting was member, Jeff Yates and alternates, John Sewell and Katherine O'Connor.

The petitioner presented the history of the property. Petitioner's family owns the property in Trust. The property at 169 King Street is zoned residential. The Petitioner presented evidence and affidavits that the property was built before 1950 as a single family residence and was destroyed by fire around 1978. The owner then rebuilt the property as a 3 family residential dwelling, without permits, and there were affidavits presented that the property has been continuously occupied as a 3 family dwelling since that time. There are no building records on file for this dwelling or use. The assessors had assessed it as a 3 family dwelling until sometime in the 1990's but it is no longer being assessed as a 3 family dwelling. The Town of Littleton does not allow multi-family structures in the residential zone.

The Building Inspector opined that the 3 family has never been approved through the department and concluded that the property was a single family dwelling unit. The Petitioner requested that the Board consider this property as a pre-existing, non-conforming use.

One abutter appeared in favor of the Petitioner. The building inspector defended his position. The Board deliberated at length. Most of the evidence was accepted and uncontested factually. The Board reviewed the "grandfathering" provisions of Massachusetts General Laws and the need for safety concerns with multi-family dwellings under the Building Code, and decided to continue the case to obtain an opinion of counsel relative to the Massachusetts Statute. The case was continued to July 19, 2018.

At the continued hearing, Petitioner failed to appear, having notified the Board that he was not going forward, and counsel's letter was read into the record. Essentially the letter stated that grandfathering exists for structures and not for use when no building permits had been obtained and that the Board was not able to grant the Petitioner's requested relief.

FINDINGS: The Board found that the Building Inspector's decision was correct.

DECISION: The Board voted unanimously to DENY Petitioner's appeal of the Building Inspector's decision.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: Sheaill R. Gould, Chairman
Alan Bell, Clerk

Dated: August 2, 2018

Deed Reference: Book 58195, Page 155.

I hereby signify that twenty days have elapsed since the filing of the above decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

D. Crory

Town Clerk

True Copy Attest:

Linda Ford

received

Aug 3, 2018

Littleton, Massachusetts

169 King St. ZBA Case No.: 8974

**TOWN OF LITTLETON
BOARD OF APPEALS**

37 Shattuck Street
P.O. Box 1305
Littleton, MA 01460
Tel: 978-540-2420



APPLICATION FOR PUBLIC HEARING

Pursuant to MGL Chapter 40A, 40B and 41 and the Littleton Zoning Bylaws

TOWN USE ONLY

Received by the Town Clerk Office

received
L Ford 5/24/18

The filing is not official until stamped by the Town Clerk

Filing Fee paid: \$ 300 Check # 159

Pursuant to the provisions of Chapter 40, §57 of the Massachusetts General Laws as adopted by Town Meeting 2003, this document must be signed by the Tax Collector verifying payment of taxes.

Deborah A. Richards

Signature of Tax Collector

The undersigned hereby submits this petition for the following action (check all that apply):

Appeal of Decision of Building Inspector or other administrative official (see page 2)
 Special Permit (40A) (see page 2)
 Variance (see page 3)
 Comprehensive Permit (40B) Complete additional application (see page 2)

PETITIONER: Signature

Joseph Azzolino Date: 5/22/18

Print Name

Joe Azzolino

Address

47 Hartwell Ave

Town, State, Zip

Littleton, MA 01460

Phone #

978-828-7062

Email Address

jazzolino@ownnewengland.com

Deed Reference: Bk 58195 Page 155

FEES
Residential Property \$200 filing fee + \$75 recording fee + \$25 abutter list = \$ 300 to Town of Littleton
Commercial Property \$350 filing fee + \$75 recording fee + \$25 abutter list = \$ 450.00 to Town of Littleton
Comprehensive Permit \$1000 + \$100/unit over 10 units
ADDITIONAL FEES: ALL APPLICATIONS:
Legal Notice publication fee to be paid prior to opening the hearing

PROPERTY OWNER: include authorization of Owner for Petitioner to represent Owner, if unsigned

Caroline Cummings Date

Caroline Cummings

Print Name (if different from petitioner)

948-484-4047

Phone #

CAROL.Azzolino@gmail.com

Email

47 Hartwell Ave Littleton

Address (if different from petitioner)

ASSESSOR MAP & PARCEL NUMBER U38 1

ZONING DISTRICT: R VC B IA IB (Circle all that apply)

Check box if applicable **AQUIFER DISTRICT**

WATER RESOURCE DISTRICT

169 King Street

ZBA Case 8974

Appeal

Under MGL c. 40A §. 8

The undersigned hereby appeals a written order or decision of the Building Commissioner / Zoning Officer or other administrative official alleged to be in violation of the provisions of MGL c. 40A or the Zoning By-laws to the Board of Appeals for the Town of Littleton.

1. From what Town Official or Board is the appeal being sought?

Mandatory: Attach copies of written order or decision under appeal

Administrative Official

Building Inspector

Date of order / decision

5/10/2018

2. Which statute or Zoning Bylaw do you rely for your appeal?

MGL c.40A § _____ Zoning Bylaw § _____ Code of Littleton § _____

You may also consider whether you qualify for relief under any other authority of the Board to grant a Special Permit or Variance.

3. I hereby certify that I have read the Board of Appeals Instructions for Appellants and that the statements within my appeal and attachments are true and accurate to the best of my knowledge and belief.

Signature

Joseph Azzolino

Print name

Joseph Azzolino

Special Permit 40A

Under MGL c. 40A §. 9

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to grant a Special Permit for the reasons hereinafter set forth and in accordance with the applicable provisions of the Zoning By-law.

1. Special Permits are expressly permitted in the Zoning Bylaws. Which Zoning Bylaw section do you rely for your appeal?

Zoning Bylaw § _____

2. Why are you applying for a Special Permit? Attach a written statement that specifically describes existing conditions and your objectives, along with necessary exhibits as listed in the filing instructions. *You may also consider whether you qualify for relief under any other authority of the Board to grant a variance.*

3. I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.

Signature

Print Name

Special Permit 40B

Under MGL c. 40B

See supplemental instructions: Littleton Zoning Board of Appeals Rules for the Issuance of a Comprehensive Permit under M.G.L.c40B

Cummins Family Trust

169 King St.

Littleton, Ma 01460

May 22, 2018

Town of Littleton

Building Inspector

Roland Bernier

The purpose of this letter is to address your decision pursuant to the multi-family home located at 169 King Street, Littleton.

In an email addressed to Mr. Jason M. St. Pierre, Esquire, dated May 10, 2018, you have stated your opinion, when asked by a potential buyer's attorney, that the existing multi-family home is "in the eyes of the Littleton Building Department this building is still a single-family dwelling unit".

While we agree that the current building department files do not show any permits regarding a conversion to a multi-family, however, the owner had purchased the home (after a fire) and restored it to its present condition. I have attached the purchase deed for your reference. This occurred in 1978

Furthermore, I'd like to present to you a few affidavits stating that between 1980 to 1983, the home was rented as a multi-family dwelling and has been ever since, some 39 years later.

The current ownership is contenting that this home should be considered "pre-existing, non-conforming use". Toward that end, I'd like you to reconsider your position and zoning opinion based pre-existing, non-conforming use.

Respectfully,

Cummins Family Trust

Caroline Cummins *Caroline L. Cummins*

Carol Cummins Azzolino *Carol Azzolino*

APR 25-78 AM 0337 0178E *11.00

AMREVEST, Incorporated
 a corporation duly established under the laws of Massachusetts
 and having its usual place of business at Quannapowitt Parkway
 Wakefield, Middlesex

County, Massachusetts, for \$31,800 consideration paid.

grants to James J. Cummins, Jr.

of 170 King Street, Littleton, Middlesex County with quitclaim instruments
 Massachusetts

the land in

[Description and encumbrances, if any]

34-2
 SEE PLAN & RECORD BOOK 13427 PAGE 086

The land with the buildings thereon, located in Littleton, Middlesex County, Massachusetts and being shown on a plan of land in Littleton, surveyed for AMREVEST, Incorporated by Charles A. Perkins Co., Inc. dated January 1978 to be recorded herewith, bounded and described as follows:

Beginning on the southerly side of King Street at the corner of land now or formerly of George B. and Priscilla C. Caldwell;

Thence running North 89°-03'-48" East along said King Street one hundred twelve and 48/100 (112.48) feet to a Massachusetts Highway bound;

Thence running South 43°-10'-32" East by Interstate Route 495 one hundred forty-nine and 9/100 (149.09) feet to a Massachusetts Highway bound;

Thence running South 9°-07'-15" East by Interstate Route 495 two hundred six and 16/100 (206.16) feet to a Massachusetts Highway bound;

Thence running South 76°-35'-15" West by land now or formerly of AMREVEST, Incorporated two hundred twenty-four and 6/100 (224.06) feet to a concrete bound;

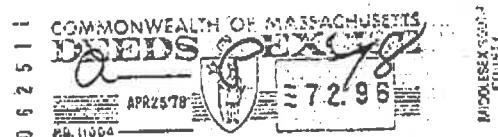
Thence running North 4°-36'-26" West by lands of said AMREVEST,
Incorporated and George B. and Priscilla C. Caldwell
three hundred sixty-three and 59/100 (363.59) feet
to the point of beginning;

Containing 1.53 acres of land, more or less.

Being a portion of Parcel 11 as described in the deed from
American Mutual Corporation to One Nineteen Corporation dated
December 27, 1972 recorded with Middlesex South District Deeds
in Book 12354 at Page 094 (See Pages 103 & 104).

Certificate of Change of Name dated February 22, 1978 to be
recorded herewith.

The premises are conveyed subject to an Option Agreement between
the parties hereto to be recorded herewith for the purchase of
an easement in and within that strip of land shown on and marked
"Right of Way" on the Plan of Land by Charles A. Perkins Co.,
dated January 1978, referred to above and to be recorded herewith.



In witness whereof, the said AMREVEST, Incorporated
has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and
delivered in its name and behalf by John J. Hoare, its Vice President, and
Herbert W. Converse, its Treasurer, hereto duly authorized, this 15th

day of April in the year one thousand nine hundred and 78

Signed and sealed in presence of

John J. Hoare

AMREVEST, Incorporated

by John J. Hoare
Vice President

Herbert W. Converse
Treasurer

The Commonwealth of Massachusetts

Middlesex ss.

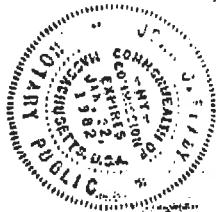
April 5 1978

Then personally appeared the above named John J. Hoare and Herbert W. Converse
and acknowledged the foregoing instrument to be the free act and deed of the AMREVEST,
Incorporated

before me

John J. Brady
Notary Public Massachusetts

My commission expires January 22 1982



Property Address: King St. & ⁷⁴ mill Rd., Littleton, MA.

QUITCLAIM DEED

We, JAMES J. CUMMINS JR., and CAROLINE L. CUMMINS, of Littleton, Middlesex County, Massachusetts

in consideration of LESS THAN ONE HUNDRED AND 00/100 DOLLARS (\$100.00)

grant to JAMES J. CUMMINS, JR., CAROLINE L. CUMMINS and CAROL L. AZZOLINO, Trustees OF THE CUMMINS FAMILY TRUST, under a Declaration of Trust dated November 19, 2002, a certificate of which is recorded with Middlesex South District Registry of Deeds herewith, *both of 74 mill Rd., Littleton, MA. 01460*

With Quitclaim Covenants

three certain parcels of land with the buildings thereon situated in Littleton, in the County of Middlesex, and said Commonwealth, as follows:

The Grantor specifically reserves a Declaration of Homestead in this property, which was recorded with said Deeds in Book 24743, Page 592.

King
St. & mill Rd., Littleton, MA.

Executed as a sealed instrument under the pains and penalties of perjury on March 29, 2009.

James J. Cummins Jr.
JAMES J. CUMMINS, JR.
Caroline L. Cummins
CAROLINE L. CUMMINS

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Date: March 29, 2009

On this day, before me, the undersigned notary public, personally appeared JAMES J. CUMMINS, JR. And CAROLINE L. CUMMINS, to me through satisfactory evidence of identification which was valid driver's licenses, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose

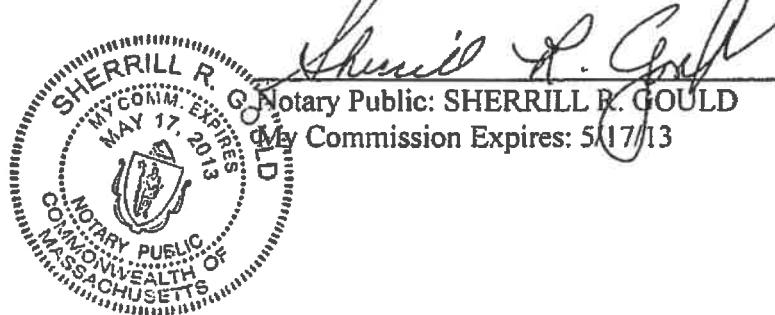


EXHIBIT A

PARCEL I

Property Address: 169 King Street, Littleton, MA 01460

The land in Littleton with the buildings thereon now known and numbered 169 King Street shown on the plan entitled, "Land in Littleton, Mass. Surveyed for Amrevest, Incorporated," by Charles A. Perkins Co. Inc., dated January 1978 recorded with Middlesex South District Deeds in Book 13427 at Page 086, said land being marked thereon, "1.53 acres."

Meaning and intending to convey the premises acquired from Amrevest, Incorporated, by deed dated April 5, 1978 recorded with said plan.

Being the same premises conveyed in Book 20115, Page 402 Middlesex South District Registry of Deeds.

PARCEL II

Property Address: King Street, Littleton, MA 01460

The land with the buildings thereon, located in Littleton, Middlesex County, Massachusetts and being shown on a plan of land in Littleton, surveyed for AMREVEST, Incorporated by Charles A. Perkins Co., Inc. dated January 1978, bounded and described as follows: *See Plan 362 of 1978.*

Beginning on the southerly side of King Street at the corner of land now or formerly of George B. and Priscilla C. Caldwell;

Thence running North 89°-03'-48" East along said King Street one hundred twelve and 48/100 (112.48) feet to a Massachusetts Highway bound;

Thence running South 43°-10'-32" East by Interstate Route 495 one hundred forty-nine and 9/100 (149.09) feet to a Massachusetts Highway bound;

Thence running South 9°-07'-15" East by Interstate Route 495 two hundred six and 16/100 (206.16) feet to a Massachusetts highway bound;

Thence running South 76°-35'-15" West by land now or formerly of AMREVEST,
Incorporated two hundred twenty-four and 6/100 (224.06) feet to a concrete
bound;

Thence running North 4°-36'-26" West by lands of said AMREVEST, Incorporated and
George B. and Priscilla C. Caldwell three hundred sixty-three and 59/100
(363.59) feet to the point of beginning;

Containing 1.53 acres of Land, more or less.

Being the same premises conveyed in Book 13427, Page 086 Middlesex South District
Registry of Deeds.

PARCEL III

Property Address: 74 Mill Road, Littleton, MA 01460

The land in Littleton with the buildings thereon now numbered 74 Mill Road shown as
Lot 1 on the plan entitled, "Land in Littleton, Mass. surveyed for JAL Realty Trust," by
the Perkins Company (No, 5300) dated December, 1983 recorded with Middlesex South
District Deeds in Book 15473 at Page 174, containing, according to said plan, 2.9 acres.

Being one of the four lots acquired from the JAL Realty Trust by deed dated March 5,
1984 recorded with said Deeds in Book 15473 at Page 174.

There shall be appurtenant to Lots 3 and 4 shown on said plan, in common with Lot 1, the
right to use, as a common driveway, the strip of land thirty-five feet wide extending
northeasterly from Mill Road along Route 495 marked upon said plan, "Part of Lot 1."

By the acceptance hereof the Grantees and their successors and assigns hereby covenant
and agree wit the Grantor and his successors and assigns that:

1. The owners from time to time of said Lots 1, 3 and 4 shall jointly maintain said
common driveway in good order and condition, properly maintained and free of
accumulations of snow, ice and debris.
2. Said owners shall jointly bear the cost of such maintenance, repairs,
reconstruction, plowing and grading, the share of each lot owner to be determined
upon the basis of the percentage of the total driveway from Mill Road used by
each.
3. The owners of said lots shall restrict their use of the surface of said driveway to
that of ingress and egress and shall not impede the passage of foot or vehicular
traffic on said driveway by parking on it, except that occasional overflow of
guests' vehicles will be permitted if such vehicles are parked parallel with and as
close to the perimeter of said private driveway as is possible.

4. Each owner shall have the right to commence an action at law or in equity to compel compliance with the aforesaid covenants and agreements.

There shall be appurtenant to lot 3 an easement across Lot 4 15 feet in width as a means of access to Mill Pond in the location of the number, "518" shown on said plan on the northwesterly line of Lot 3.

Being the same premises conveyed in Book 17610, Page 210 Middlesex South District Registry of Deeds.

10/2011 add
Littleton 25

**NASHOBA ASSOCIATED BOARDS OF HEALTH
ENVIRONMENTAL HEALTH DIVISION**

AYER, MA 01432

978 772-3338

SEWAGE DISPOSAL WORKS CONSTRUCTION PERMIT

Permit For: LOCAL UPGRADE APPROVAL AND LOCAL VARIANCE(S)

ISSUED FOR THE

Littleton

BOARD OF HEALTH

OWNER THE CUMMINS FAMILY TRUST

(Non transferable - formal permit transfer must be requested upon change of ownership)

LOCATION OF LOT: 169 KING ST.

MAP/PARCEL: U-32/167A

Date Permit Issued:

Lot Size: 1.54 ac

Soil Description: 0-32" T&S: 32-68" C1 COS: 68-96" S&G: ESHWT 18"

Groundwater: ESHWT 18"

PERC RATE: 2 MPI

ENGINEERING OR SPECIAL PREPARATION:

System to be installed according to engineered plan No: 05-067D

Dated: 2/9/2018 Rev: 2/26/2018

By: CIVIL SOLUTIONS INC

Bedroom Count: THREE 1 BEDROOM APTS (330GPD) HOUSE

Water Supply: Well Town

Primary Installation: 2000 GAL 2-COMP SEPTIC TANK W/TEE FILTER; 1000 GAL PUMP CHAMBER (H2O TANKS)

Secondary Installation: 10' X 45' LEACHFIELD - VENTED.

Special Notes:

FINAL FILL AND GRADING TO BE NOTED ON THE ENG AS-BUILT PLAN. LOCAL UPGRADE APPROVAL AND LBOH VAR. GRANTED (OUTLET OFFSET TO GW, LOADING RATE). WATER LINE TO BE RELOCATED. MANHOLE TO GRADE OVER INLET SIDE OF SEPTIC TANK. INSTALLER TO VERIFY BUILDING SEWER ELEVATION PRIOR TO CONSTRUCTION. DUAL PUMPS NEEDED.

PERMIT PREPARED FOR BOARD BY NASHOBA HEALTH DEPARTMENT AGENT: 2/27/2018

I agree upon accepting this PERMIT to comply with all Board of Health regulations and the State Environmental Code during all phases of installing the septic system.

SIGNED:

Owner Contractor Licensed Installer

Record of Inspections

NABH Licensed Installer:

INSPECTIONS REQUIRED

- FIELD excavation, before fill/stone by Eng NABH
- Fill in place by Engineer NABH
- Completed system prior to backfill
- Final fill and grading ON ENG AS-BUILT PLAN
- Engineer certification in writing of completed system
- As built plans by design engineer by Installer
- Well completion report and water test submitted to this office
- Recorded deed/fill easements submitted to this office
- TEST PUMP/ALARM.
- INCH HART, INCH TUBE, RISERS
- All inspections completed

Ins. Date

Ins. By:



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill
Rebekah Lacey Ivria Glass Fried Eric Reustle Blake M. Mensing Katherine E. Stock

July 12, 2018

Sherrill Gould, Chair
Zoning Board of Appeals
Littleton Town Offices
37 Shattuck Street
PO Box 1305
Littleton, MA 01460

Re: 169 King Street

Dear Sherry:

I have been asked to review and comment on the appeal concerning 169 King Street. This property is presently used as a three-family dwelling, which is not a permissible use in the applicable zoning district. This property was converted from a single-family dwelling in approximately 1978, without the authorization of any building permits. This appeal presents the question of whether the three-family use is protected by any statute of limitations. It is not.

M.G.L. c.40A, §7 creates a statute of limitations for zoning enforcement. This statute works differently, depending on whether or not a building permit has been issued. In cases where a building permit has been issued, the statute provides as follows:

If real property has been improved and used in accordance with the terms of the original building permit, no criminal or civil action intended to compel the abandonment, limitation or modification of the use allowed by the permit or the removal, alteration or relocation of a structure erected in reliance upon the permit by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter shall be maintained unless the action, suit or proceeding is commenced and notice of the action, suit or proceeding is recorded in the registry of deeds for each county or district in which the land lies or, in the case of registered land, the notice is filed in the registry district in which the land lies within 6 years of the commencement of the alleged violation.

(Emphasis added). This statutory provision protects structures and uses from zoning enforcement after six (6) years if the structure and use were described in a building permit application and a building permit was subsequently issued.

However, if no building permit has been issued, then the following statutory provision applies:

No criminal or civil action intended to compel the removal, alteration, or relocation of a structure by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter or the conditions of a variance or special permit shall be maintained unless the action, suit or proceeding is commenced and notice of the action, suit or proceeding is recorded in the registry of deeds for each county or district in which the land lies or, in the case of registered land, the notice is filed in the registry district in which the land lies within 10 years of the commencement of the alleged violation.

(Emphasis added). This statutory provision protects structures erected without a building permit after ten (10) years. This provision offers no protection to illegal uses that were not authorized by a building permit, and these uses never gain any protection or immunity from zoning enforcement. If 169 King Street was converted from a single-family dwelling to an illegal three-family dwelling in 1978, without obtaining a building permit that describes the work that was done, then the Building Commissioner retains full authority to treat this as a zoning violation, and order the owner to cease and desist the illegal three-family use.

Thank you very much, and please let me know if I can answer any questions.

Sincerely,



Christopher H. Heep

cc: R. Bernier