

# TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295  
NORWELL, MASSACHUSETTS 02061  
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Lois S. Barbour, Chair  
Philip Y. Brown, Vice Chair  
David Lee Turner, Clerk

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Thomas P. Harrison  
Ralph J. Rivkind

## FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

*File No. 18-02*

A PUBLIC HEARING was held on January 31, 2018, and continued to and completed on February 14, 2018, by the Norwell Board of Appeals (the Board) under Massachusetts General Laws, Chapter 40A, Sections 6 and 9, at the Norwell Town offices, 346 Main Street Norwell, MA, on the Application (the Application) of:

Albert E. Guild & Leona M. Guild,  
husband and wife, (the Applicants),  
189 Tiffany Road, Norwell, MA 02061,  
(the Property)

For a Special Permit authorizing a conversion to operate one accessory dwelling unit in their single-family dwelling, which has been in existence for and not substantially altered within twenty-four (24) months or longer at the time of Application. If all of the conditions in this Special Permit are satisfied and the conversion is completed hereunder, the single-family dwelling will contain two viable dwelling units, as defined in Section 2316 d) of the Norwell Zoning By-Laws, that shall be subject to the terms and condition set forth in said Section 2316 d) and the additional conditions set forth at the end of and as a part of this Decision.

The Property, that contains the single-family dwelling is further described in the DEED Recorded with Plymouth Deeds, in Book 3366, Page 14, dated: May 15, 1967, from Snowdale to Guild. The Applicants were represented at the hearing by Ronald N. Whitney, Esquire, 549 Bedford Street, Whitman, MA 02382

The Public Hearing for this Application was duly noticed in *The Norwell Mariner* on January 11, 2018, and January 18, 2018 and posted at the Norwell Town Hall. The Applicants attended the hearing and their attorney, referenced above, presented the Application.

On October 23, 2017, the Norwell Building Department Issued an Inspection Report and violation notice to the Applicants, for the Property that found that it violated

780 CMR 105.1 and G.L.c.40A. No appeal has been filed by the Owners of the Property within the statutory appeal period of that Notice and Determination. On November 21, 2017 a CEASE AND DESIST ORDER was issued by the Norwell Building Commissioner to the Applicants. No appeal has been taken by the Applicants from that action and Order within the statutory appeal period.

This Application for "Special Permit for In-Law Apartment" was filed with the Town Clerk and Board of Appeals on January 3, 2018..

The following documents were in the File, were marked as Exhibits and were received into evidence:

Exhibit No. Exhibit Description

- 1 The Application, signed by the Applicants Attorney on December 21, 2017, received and stamped by the Town Clerk & Board and Appeals, on January 3, 2018
2. Building Permit – 189 Tiffany Rd. 87-128 -
3. Application to the Board of Health 1987, two bed rooms and Toilet
4. Plan, April 1986, submitted with Exhibit 3 .
- 5.. Published Legal Notice
6. Deed – Snowdale to Guild
7. Mortgage Survey Plan – 1967
8. Septic systems & tanks Plan 189 Tiffany Road, Norwell
9. Misc. record cards
10. Inspection Report of October 23, 2017, Pages 1 & 2 (Listing)
- 11 Cease & Desist Order – Building Commissioner
- 12 A Copy of Norwell Zoning By-law Section 2316 d:

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**FINDING AND RULINGS:**

The Board Finds and Rules, based upon the testimony of the Applicants, the Exhibits and the provisions of the Norwell Zoning By-laws, that:

The Property is located in a Residential Zoning District A.

In the Residential Districts, the Norwell Zoning By-Laws provide, in Section 2316 d), for the "conversion" of a SINGLE- FAMILY DWELLING by the addition of one accessory dwelling unit (one or more rooms with kitchen and bathroom facilities not shared WITH ANY OTHER DWELLING UNIT) if certain conditions of the double occupancy are satisfied.

The qualifying conditions set forth in Section 2316 d) must be satisfied. A copy of the section is marked as Exhibit 12.

The Application has the second line in the action section, on the title page, circled. The requested relief, "Special Permit for in-Law Apartment" section requires an In-Law Apartment Affidavit. One has not been filed with this Board, as required.

The respondents did not file detailed plans and exterior views of the dwelling after the addition of the proposed in-law apartment. Members of the Board are familiar with the general appearance and character of the neighborhood that surrounds the Property and if the present exterior of the subject property is maintained during the dual use of the converted property, the Board finds and rules that the conversion is appropriate and in harmony with the general appearance and character of the neighborhood and that the proposed changes will not change the appearance of the main dwelling as a single-family residence.

The Norwell Board of Health Administrator has not determined the impact of the dual use on sub-surface sewage disposal. The Applicants must make application for such approval, that will include determinations and restriction if any, by the Board of Health, in the documents required for this Board, as set forth in Section 2316 d), 3)..

This Board can and hereby does limit any approval of the Application and conversion process upon the express limitation that the total number of bed rooms in the dwelling, including both dwelling units, shall not exceed five (5), but, the approved total, as set forth in the Board of Health approval and determination required to be sent to this Board as a limit under Section 2316 d) (5) of the Zoning By-Laws, if less than Five (5), shall apply.

During the hearing there was reference to G.L.c.40A Section 7, and whether or not it validates the use described in the Inspection Report and Cease and Desist Order issued by the Building Commissioner. The Applicants did not present any evidence to establish that their claimed legal use was authorized by a prior legally issued building permit or other document, and therefore, the issue is moot..

The Board also finds that the conversion will not be detrimental to the neighborhood, nor significantly alter the character, nor be injurious or hazardous to the neighborhood.

#### **DECISION OF THE BOARD:**

Based upon the foregoing, upon a motion made and duly seconded, the Board, Harrison, Rivkind and Turner, UNANIMOUSLY VOTED to GRANT a Special Permit for an In-Law Apartment to the Applicants, for the Property, in accordance

with the Application, as allowed under Section 2316 d) of the Norwell Zoning Bylaws, SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS AND PRECONDITIONS:

**SPECIAL PRECONDITIONS:**

1. The exterior appearance of the existing structure shall not be altered or change
2. The owners of the Premises, the (Property) shall together, or any survivor of the two of them, occupy the dwelling unit (owners unit) , except for temporary absences, and the other unit shall be occupied by one or more persons (a) directly related to the owned by blood, marriage, adoption, or (b) sixty years of age or more.
3. The Board of Health shall provide by proper document, after proper request or application by the Applicants, to this Board that the sewage disposal will be satisfactorily provided for, and that there is an appropriate reserve area on the site meeting the requirement of the Board of Health Rules and Regulations and Title V of the State Environment Code, having soils suitable for a replacement on site disposal system. The Board of Appeals shall certify its receipt and acceptance of such approval by the Board of Health to the Town Clerk.
4. Occupancy of the accessory dwelling unit as a separate dwelling hereunder will require the activation of this Special Permit by satisfactory completion of the requirements in section 3 above, and, the continued use under such Special Permit shall be contingent upon compliance with this Decision.

**SPECIAL CONDITIONS:** This Special Permit shall become null and void under any one of the following circumstances:

1. If at least one of the Applicants is not able to occupy their dwelling Unit (owners unit), in the Premises.
2. If the occupants of "the other unit" do not meet the requirements in Section 2 above, for that "other unit," in the Premises.
3. As provided under Section 2316(d)(4), this Special Permit will terminate upon the transfer of ownership, and the use will revert back to a single-family dwelling.
4. Additionally, the Applicants shall file an In-Law Apartment Affidavit annually with the Board of Appeals.
5. An In-Law Apartment Affidavit shall be filed with the Board before any Occupancy Permit is issued.

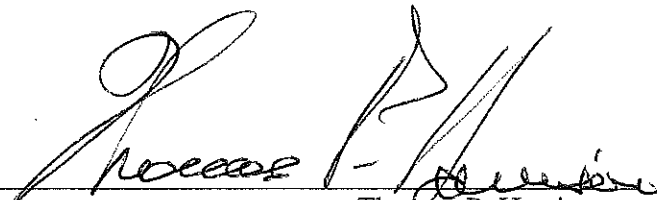
**CONDITIONS APPLYING TO ALL DECISIONS:**

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1. **RECORDING OF THE DECISION:** After receiving certification from the Town Clerk that no appeal has been taken within twenty days, or if appealed then dismissed or denied, a copy of the Board's decision must be filed with either the Registrar of the Plymouth County Registry of Deeds to be recorded and indexed in the grantor index under the name of the owner of record in the case of unregistered land, or with the Recorder of the Land Court to be registered and noted on the owner's certificate of title in the case of registered land.
2. **RECORDING RECEIPT:** A copy of the recording fee receipt must be returned to the Board of Appeals. **NOTE:** No building permit shall be issued without such evidence.
3. **EFFECTIVE DATE OF APPROVAL:** The Special Permit granted by this Decision shall take effect only at such time as a copy of this Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Registrar of Deeds or Recorder of the Land Court.
4. **EXPIRATION:** The applicant must exercise any Special Permit granted by the ZBA within two (2) years from the date of the decision or it shall lapse.

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Thomas P. Harrison

  
Ralph J. Rivkin

  
David Lee Turner

Date Filed with Office of the Town Clerk

*This space is for Date Stamp of  
Town Clerk*

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**NOTICE OF APPELLATE RIGHTS: Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.**