

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295
NORWELL, MASSACHUSETTS 02061
(781) 659-8018 • Fax (781) 659-1892

Members

Lois S. Barbour, Chair
Philip Y. Brown, Vice Chair
David Lee Turner, Clerk

Associate Members

Thomas P. Harrison
Ralph J. Rivkind

FINDINGS AND DECISION of The Norwell Board Of Appeals

File No. 17-18

A public hearing was held on November 15, 2017, by the Norwell Zoning Board of Appeals (hereinafter "Board") at the Norwell Town Hall, 345 Main Street Norwell, MA 02061 on the application of:

**Domenic Mazzocco
45 Cedar Point
Norwell, MA 02061**

For the **Appeal** of a denial of a building permit, pursuant to Norwell Zoning Bylaw sections 1230.8 and 1323 (a), to finish the second-floor interior of a recently constructed detached three-car garage, built pursuant to a validly issued building permit for a home office and exercise room with a bathroom, on property located at **45 Cedar Point** in Residential District A, as shown on Assessor's Map 25B Block 71 Lot 43, and per Plymouth County Registry District of the Land Court as Document No. 569646, Certificate of Title No. 114247. The lot consists of 4.15 acres and the house was built in 2012.

The Public Hearing for this application was duly noticed in *The Norwell Mariner* on October 19, 2017, and October 26, 2017, and posted by the Town Clerk in accordance with the Open Meeting Law.

Steven M. Guard, Esquire, of 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 and Mr. Mazzocco, the applicant, presented at the hearing of the Board. No member of the public spoke in favor of or in opposition to this application.

FILE DOCUMENTATION:

1. Letter of September 28, 2017 to ZBA from Applicant's Attorney, Stephen M. Guard, including the following:
 - a. Norwell Board of Appeals Public Notice Authorization
 - b. Application for Public Hearing, signed by the Applicant's attorney, Stephen M. Guard, and date-stamped by the Norwell Town Clerk on September 28, 2017
 - c. Assessor's Field Card and list of abutters receiving notice
 - d. Transfer Certificate of Title No. 114247 Bk 571 Pg 47, Doc. 659646
2. Upper Floor Plan (Sheet A2), dated 10/7/2016, prepared by Axiom (not stamped or signed), entitled "Carriage House/ The Mazzocco Residence/ 45 Cedar Point/ Norwell, MA 02061"
3. "Site Plan/ 45 Cedar Point/ Assessor's Map 5, Block 75, Lot 43/ Norwell, Massachusetts", dated 12/21/15 and revised 1/11/17, prepared by Merrill Engineers and Land Surveyors, 427 Columbia Rd, Hanover MA (not stamped or signed)
4. Letter of March 29, 2017, from Thomas M. Barry, Norwell Inspector of Buildings, relating to "habitable space on the upper level [of the then proposed 3-car detached garage]" with 2 enclosures, including a copy of the proposed floor plan and highlighted definitions of "Habitable Space", Dwelling", Dwelling Unit", and "Sleeping Unit" from the 2009 *International Building Code*

FINDINGS OF THE BOARD: Based upon the evidence submitted and/or upon representations made by the Applicant's attorney and the Applicant during the public hearing, and the filed materials set forth above, the Board finds the following:

1. The premises known and numbered as 45 Cedar Point, Norwell, MA, Assessor's Map #25B, Block 71, Lot 4, located in Residential A District, is owned by the Applicant, Domenic Mazzocco.
2. The applicant proposes to finish the interior of the second-floor of a recently constructed, detached three-car garage for use as a home office for his dental practice and as an exercise room.
3. The Board notes the "validly issued permit" included in the public notice only provided for unfinished space on the second level of the three-car garage.

4. This application was referred to the Board of Appeals due to the Inspector of Building's concern that the originally proposed plan would constitute a "dwelling unit" under the Norwell Zoning Bylaw and as further described under various definitions of the 2009 International Building Code, copies of which were submitted to the Board with his letter of 3/29/17, to the Applicant.
5. The Board finds that the Applicant's proposed interior construction, layout and use could constitute a "dwelling unit" as defined by Article V of the Norwell Zoning Bylaw and as described by definitions contained in the 2009 International Building Code, provided by the Inspector of Buildings in support of his stated concern. Therefore, the Board does not grant authorization or permission for construction of any proposed "kitchen unit" in accordance with the finding of the Inspector of Buildings but would allow a proposed home office and exercise room with bathroom.
6. The Board finds that the Applicant's proposed home office with exercise room and bathroom, further subject to Finding 5 above, does not meet criteria to qualify as an "Accessory Dwelling", described in Article II, Section 2316 (d) of the Norwell Zoning Bylaw.

DECISION OF THE BOARD:

Upon a motion duly made and seconded, Members Brown, Harrison, and Barbour **VOTED** unanimously to grant the **Appeal** of the denial of a building permit by the Inspector of Buildings for property located at **45 Cedar Point** in accordance with its findings stated above and incorporated herein, based on the condition offered by the applicant that:

1. The upper level of the 2-story building (with use of the lower level as a three-car garage) will not be occupied or used as a dwelling unit or in-law apartment without further relief being granted by this Board.
2. No kitchen facilities are allowed.
3. The applicant shall record at the Plymouth County Registry of Deeds the "Declaration of Restrictive Covenant to the Town of Norwell" on the subject property that the second floor of the detached three-car garage shall not be used as a dwelling unit without further relief granted by the Board of Appeals.
4. **NOTE:** A copy of such affidavit must be filed with the Town Clerk, as an integral part of this decision, before any certification relating to appeal of this decision is provided and prior to issuance of a building permit.

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**DECLARATION OF RESTRICTIVE COVENANT
TO THE TOWN OF NORWELL, PLYMOUTH COUNTY**

Re: 45 Cedar Point, Norwell, MA

I. RECITALS

Now comes Domenic Mazzocco of 45 Cedar Point, Norwell, MA 02061, the owner ("Owner") of property known as and numbered 45 Cedar Point, Norwell, MA ("Property"), as more particularly described in Certificate of Title No. 114247 filed with the Land Court Registry District of Plymouth County.

II. RESTRICTIVE COVENANT

NOW, THEREFORE, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner of the Property, for themselves and their heirs, devisees, legal representatives, successors and assigns in title to said Property, hereby declare to the said Town of Norwell that the Property shall be held, occupied, sold, transferred and conveyed, subject to the following restriction:

1. The second story of the existing detached garage shall not be used as a separate dwelling unit without further approval from the Norwell Zoning Board of Appeals.

The provisions of this Declaration shall be binding upon all the parties having or acquiring any right, title or interest in the Property, shall be for the benefit of the Town of Norwell, and shall run with and bind the Owners of the said Property their heirs, devisees, legal representatives, successors and assigns in title and their heirs, devisees, legal representatives, successors and assigns.

1. The Owner, its successors and assigns shall be fully discharged and relieved of liability under this Declaration, upon ceasing to hold an interest in the Property.
2. Each successor owner of the Property by accepting delivery of a deed subject to this Declaration or executing an assent to this Declaration agrees and covenants that the terms and conditions of this Declaration are reasonable and agrees to be bound thereby.
3. The failure of the Town of Norwell to enforce any provision hereof shall not be deemed to be a waiver of the right to do so thereafter as to the same breach or to one occurring prior or subsequent thereto.

4. If any provision hereof or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EXECUTED as a Declaration under seal this ____ day of December, 2017.

OWNER

Domenic Mazzocco

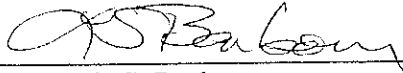
COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

On this ____ day of December, 2017, before me, the undersigned notary public, personally appeared Domenic Mazzocco and proved to me through satisfactory evidence of identification, which was a MA Driver's License, to be the person whose name is signed on the within document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

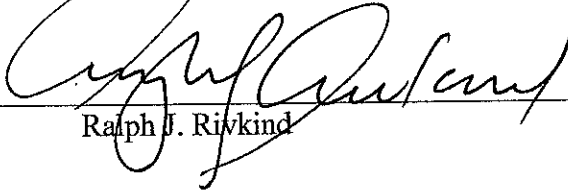
My Commission Expires: _____



Lois S. Barbour



David Lee Turner



Ralph J. Rivkind

This space reserved for
Date Stamp of Town Clerk

Date Filed with Office of the Town Clerk

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.