



## Zoning Board of Appeals

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195 Main Street  
Maynard, MA 01754

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### FINDINGS AND DECISION

#### **Laura Weinstein appeal of Building Commissioner Determination to Zoning Board of Appeals,**

**Property Location:** 22 Howard Road, Maynard, MA  
**Date of Decision:** November 27, 2017  
**Petition Number:** ZB 17- 07

#### **I. Procedural History**

- a. Pursuant to Massachusetts General Law Chapter 40A, Section 8, on October 10, 2017, an application to the Zoning Board of Appeals (ZBA) was filed by Laura Weinstein, of 22 Howard Road, Maynard, Ma. 01754. The applicant is appealing the Building Commissioner's determination that a kitchen, proposed to be operated by a non-resident at the Applicant's residence, 22 Howard Road, is a prohibited use.
- b. A public hearing for the application was held on November 27, 2017.
- c. The application was accompanied by
  - A plot plan (survey) prepared by David E. Ross and Associates, Inc., and dated June 1, 2016.
  - A parties in interest list certified by the Board of Assessors.
  - Correspondence to the Building Commissioner from the applicant dated July 31, 2017.
  - Correspondence to the applicant from the Building Commissioner dated September 20, 2017.
- d. The application documentation and other submitted material was reviewed by the ZBA, the Building Commissioner and the Town Planner.
- e. Throughout its deliberations the ZBA has been mindful of the statements of the applicant and the representatives and the comments of the general public all as made a public hearing.

## **II. General**

- a. The subject property is located at 22 Howard Road, Maynard, MA 01754, Maynard; Map 18-Parcel 142. The owners reside on the property. The property is zoned "Single Residence District" (S1).
- b. The Applicant states they wish to rent out kitchen space at the subject property to a non-resident. The Building Commissioner has determined a non-resident renting kitchen space is prohibited.
- c. The applicant is appealing the Building Commissioner's determination that a kitchen, as proposed to be operated at the Applicant's residence is a prohibited use.

## **III. Appeal Hearing**

Section 10.2.2 of the Zoning By-Laws (ZBL) designates the ZBA as the authority to hear and decide Appeals taken by any person aggrieved by reason inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, Sections 8 and 15:

- a. Section 3.2 of the ZBL governs accessory uses.
- b. Section 3.2.2 of the ZBL states that preparing food for sale is a permitted use accessory use in a single-family residential zoning district.
- c. Section 3.2.4 of the ZBL states that resident occupants only may conduct a home occupation.
- d. The Applicant is proposing renting out the kitchen of the subject property to a non-resident.
- e. The Building Commissioner has determined the Applicant is requesting a business use in a residential district and that such a use is prohibited.
- f. The Building Commissioner has determined the Applicant is requesting a business use by a non-resident of the dwelling in a residential district and that such a use is prohibited.
- g. After reviewing the application and materials, procedures and testimony of the Building Commissioner and testimony from the Applicant, the ZBA concurred with the Building Commissioner's determination.
- h. The ZBA does not have the authority to grant a use variance.

**IV. Vote of the Board**

A motion was made by Marilyn Messenger and seconded by Leslie Bryant, denying the Applicant's appeal and upholding the determination of the Building Commissioner that a kitchen, as proposed to be operated at the Applicant's residence, constitutes a business use by a non-resident of the dwelling and as such, is a prohibited use within a single-family residential district.

The Board voted as follows:

Paul Scheiner (Chair)	<u>Y</u>
Marilyn Messenger	<u>Y</u>
John Courville	<u>Y</u>
Jerry Culbert	<u>Y</u>
Jamal De Vita	<u>Y</u>


**V. Decision**

The ZBA denies the Applicant's appeal and upholds the determination of the Building Commissioner that a kitchen, as proposed to be operated at the Applicant's residence, constitutes a business use and as such, is a prohibited use within a single-family residential district.

  
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Paul Scheiner, Chair  
For the Zoning Board of Appeals

12/13/17  
\_\_\_\_\_  
Date

Filed with the Town Clerk on: December 14, 2017

  
\_\_\_\_\_  
Town Clerk

- CC: Laura Weinstein  
Lisa L. Mead, Town Counsel  
Adam Costa, Town Counsel  
Michelle Sokolowski, Town Clerk  
Rick Asmann, Building Commissioner  
Bill Nemser, Town Planner  
Kevin Sweet, Town Administrator