

RECEIVED
TOWN OF WEYMOUTH
TOWN CLERK'S OFFICE

**TOWN OF WEYMOUTH
BOARD OF ZONING APPEALS APPLICATION**

TO BE COMPLETED BY STAFF

2021 OCT - 8 PM 3:54

Case Number: 3465

Town Clerk Stamp

Submittal Accepted: main 2 Aug Date 10/8/21
Signature of Planning Dept. Staff for minimal requirements

Determined to be complete and may now be filed with Town Clerk: [Signature]
Signature of Principal Planner or Director

PROPERTY INFORMATION - TO BE COMPLETED BY APPLICANT

PROJECT / PROPERTY STREET ADDRESS: 450 GREEN ST.

Assessor's Map Sheet, Block, & Lot: 13-121-16

Zoning District: R-1 Overlay District: N/A

OWNER OF RECORD (S) (print&sign): PADL ZONA
(The owner of record is the person or entity who owns title to the property as of today's date)

Address of owner of record: SAME

Norfolk County Registry of Deeds Book and Page No. 27210-550

Or registered in Land Registration Office under Certificate No. _____

NAME OF APPLICANT (S) (print&sign): KEVIN AND KATHY KELLY [Signature]

Applicant's Address: 445 GREEN ST.

Contact Information: Email _____ Phone _____

Check if you are an: owner(s) ☒ lessee(s) ☐ optionee(s) ☐

NAME & AFFILIATION OF REPRESENTATIVE: KEVIN P. MACKEN, ESQ.

Address: 36 ALTRUDA RD, WEYMOUTH, MA 02191

Contact Information: Email KEVIN@MACKENLAWFIRM.COM Phone 781-630-1061

NAME OF ENGINEER AND / OR ARCHITECT: _____

Prior to submitting your application you must review this entire package and the Board Rules and Regulations outlining the Board's policies and procedures. Your signature signifies that you have read the required material and you will be expected to adhere to them.

I (we) hereby certify that I (we) have read the Board of Zoning Appeals Rules and Regulations and that the statements within my (our) application are true and accurate to the best of my (our) knowledge.

[Signature]
Applicant / Petitioner - Date (sign & print)

10-8-21

KEVIN P. MACKEN AS ATTORNEY FOR APPLICANT

NATURE OF REQUEST

Application is for: _____ Special Permit _____ Variance _____ Amendment _____ Other: ☒

Applicable Section of Zoning Ordinance (specify Section (s) of the Zoning Ordinance from which relief is sought):

120 540 AND 542

The above relief and Ordinance sections will be further reviewed after a complete package is submitted. This may be amended by the Planning or Building staff during the application review process after having the benefit of plan to accurately advertise the application before the Board.

PETITIONER'S DESCRIPTION AND NARRATIVE:

To be completed by all Board of Appeals Applicants. Attach additional sheets as necessary.

PLEASE SEE ATTACHED LETTER
TO BIA

1. Describe what is presently located on the property (use as much detail as possible including all uses and square footage of each use):
2. The applicant seeks to (describe what you want to do on the property in as much detail as possible):
3. Such a use is permitted by the Town of Weymouth Zoning Ordinance under Article (insert Article, Section of the Zoning Ordinance which permits the proposed use of the property).
4. Are you aware if this property has been previously granted approvals from any Town Board or Commission? If so, please list (provide dates of previous approvals, book and page numbers or any recorded decisions and copies of past decisions).
5. Any other additional information as relevant to the Variance or Special Permit:

Kevin P. Mackin, Sr. Esq.
Mackin Law Offices
36 Altrura Road
Weymouth, MA 02191

kevin@mackinlawoffices.com

781-630-1061

October 8, 2021

Town of Weymouth
Board of Zoning Appeals
75 Middle Street,
Weymouth, MA 02191

Re: 450 Green Street, Weymouth, MA 02191

Appeal of Abutters pursuant to MGL c 40A s. 8 and s. 15 and Chapter 120 of the Zoning Bylaw

Distinguished Members of the Board,

Now come the appellants Kevin Kelly and Kathy Kelly, and appeal to the Board of Zoning Appeals (hereinafter BZA) from the decision of the Building Inspector dated September 29, 2021, with regard to the nonconforming, illegal uses of 450 Green Street, Weymouth, MA. The appellants reside at 455 Green Street, Weymouth which is directly across Green Street from 450 Green Street. The property which is the subject of this appeal is 450 Green Street, Weymouth MA, being Lot 16 of Assessors Block 121. Both premises are located in an R-1 zone as shown on the Weymouth zoning map.

The appellants are aggrieved parties because as neighbors, the non-conforming, illegal uses, and the intensity of use, interfere with their right to the quiet enjoyment of their home. The property has abandoned the pre-existing nonconforming status, and now is operating nonpermitted uses in an R-1 District and is being used illegally as a residence by the owner. In fact, he is living on the second floor – which was built under a special permit granted by this Board in 2010 for “office space”. The Building Inspector’s records do not have a residential occupancy permit nor does the Assessor’s Office indicate such use, or even a bathroom, bedroom, kitchen, or heat source. The multiple illegal uses are not permitted in an R-1 district and are a blight on this neighborhood.

Though the Building Inspector was asked about the illegal residence on the property, he failed to provide an answer to that request. Worth noting, Inspector Richards again did not provide an answer regarding residency, made by another applicant at the BZA hearing on October 8, 2021. Mr. Richards admitted that he did “not inspect the second floor” during his inspection of the property at the end of July.

The owner of the premises at 450 Green Street is Paul Zona, established by deed recorded at the Norfolk County Registry of Deeds in Book 27210 Page 550. One of the illegal, non-conforming uses Mr. Zona is currently engaged in at the property is a parking lot, advertised to the public, for commercial vehicles. In addition to this illegal use, the appellants have legitimate safety concerns related to the volume of petroleum products contained in the approximately 20 vehicles stored on site. Simple math would put an estimated volume at over 1,000 gallons of fuel on site – in this residential neighborhood. Requests

for determinations by the fire department and Board of Health were not provided by the Building Inspector in his decision either – though requested. The Inspector simply determined on his own, without authority, that there were no safety, health, or fire concerns on the premises.

On September 14, 2021, the appellants, through their attorney Kevin P. Mackin, served a demand upon the zoning enforcement officer, Mr. Jeffrey Richards, for enforcement of the zoning bylaws – a copy of which is attached as **Exhibit 1**.

Mr. Richards responded by letter dated September 29, 2021 – a copy of which is attached as **Exhibit 2**.

Appellants now request the BZA to:

1. Annul the decision of the zoning enforcement officer referenced as **Exhibit 2**.
2. Make a determination that the premises may only be used for those uses permitted as of right in the R1 district because any prior, non-conforming status has been lost by abandonment 120-42.
3. Direct the Building Inspector to enforce the provisions of the R1 district through injunction and the levying of daily penalties.

The records relevant to this property, are in the possession of the Building Inspector, and indicate after review that the subject property had historically been a sand and gravel business. This pre-existing non-conforming use changed to a builder's contracting operation under two separate owners until 2002, at which point the prior non-conforming use of a builder's operation was abandoned. In 2002, then Building Inspector Jeffrey Coates permitted a substantially less detrimental use of the property to Mr. Paul Mannix, the then owner of 450 Green Street, to operate a funeral limousine service. The grant of this reduced non-conforming use was given with the conditions that all limousines will be garaged, and all outdoor storage **WILL** be discontinued. (A copy is attached as **Exhibit 3**).

That decision by Mr. Coates may have exceeded his authority, but at least aligns with the goal of the zoning bylaws regarding pre-existing, non-conforming uses in an R1 district, which is to move the non-conforming use closer to the intended use of the district. The operation and indoor storage of limousines was substantially less detrimental to the residential neighborhood than the prior commercial use.

Mr. Zona purchased the property as referenced above in 2009 from Mr. Mannix. Mr. Zona has since 2009 stored motor vehicles, including commercial vehicles, outside of the garage, in view of neighbors and passersby. Mr. Zona has not received relief from the BZA to expand the use or add additional uses, including residential use, of the premises from that less detrimental use, authorized by Building Inspector Coates in 2002. Such an expansion or change of use requires a special permit by the BZA per Chapter 120-40. No Special Permits regarding use have been issued on the subject property by this Board, nor has a residential occupancy permit been issued.

In fact, the outdoor storage of commercial vehicles including firetrucks, motor homes, an oil truck and other vehicles and storage containers, is substantially more detrimental to the neighborhood. The Building Inspector, in his recent decision based on a physical inspection of the property, seems to have attempted to usurp the authority of this Board when stating that none of the current, illegal uses violate the zoning by laws or any other laws. He does not have the authority to permit additional, non-conforming uses or revive abandoned, non-conforming uses.

Pursuant to Weymouth Zoning provision 120-42, a pre-existing, non-conforming use is abandoned if it has not been conducted on the subject premises for two years. Clearly, the operation of a limousine service, with indoor storage, from 2002 through 2009 demonstrates an abandonment of the prior industrial uses. Where Mr. Zona has not been operating a limousine service on the premises, with all limousines being garaged, and all outside storage discontinued, those non-conforming uses would also be abandoned.

Mr. Zona is aware of the requirement of BZA approval as evidenced by his successful application for a special permit in 2010, to build a second-floor office for business use. He even recorded this special permit at the Norfolk Registry of Deeds as required.

Mr. Zona currently allows the operation of an embroidery shop, an automobile detailing business, outdoor storage rental for commercial vehicles, Zona Motor Sports, and has advertised, through signage on Green Street, the opportunity to store vehicles on site for a fee. All of these would be new, additional uses from the abandoned, non-conforming use Mr. Zona may claim to have. Each additional use would require the approval by the BZA, if even permitted in an R-1 district, followed by recording of the special permit at the Registry. None of these non-conforming uses have been approved by the BZA and are a detriment, blight, and nuisance to this neighborhood.

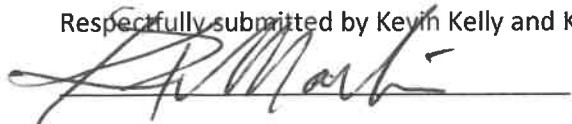
Worth noting, though "Maura's Embroidery" has been operating that business at 450 Green Street for several years, a business certificate was not applied for until July 7, 2021 – which is coincidentally the day Mr. Zona was served with a civil complaint.

Surprisingly, Mr. Richards ignores the appellants' inquiry regarding Mr. Zona and Ms. Maura McGonigle's current use of the subject property as a residence. This new, additional use would either create a mixed use, or finally convert this property to a conforming residential parcel within the R1 district.

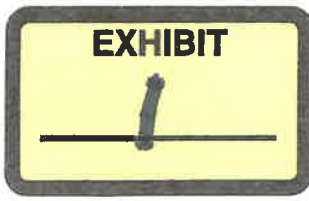
Historically, the property has never been permitted as a residential or mixed-use property and without permission from the BZA, that new use cannot be added as a mixed use. If the BZA wishes to grant the use as a residence, then it is the appellants' opinion that all non-conforming, pre-existing uses have been abandoned pursuant to Chapter 120-42.

In conclusion, the Building Inspector does not have authority to expand or permit new uses. Only this Board has that authority under Chapter 120-40 and no such Special Permits have been granted by this Board under its exclusive authority under the Ordinance.

Respectfully submitted by Kevin Kelly and Kathy Kelly, by their attorney, Kevin P. Mackin, Sr.



Kevin P. Mackin, Sr. Esq.
Mackin Law Offices
36 Altrura Road
Weymouth, MA 02191



**Mackin Law Offices
Kevin P. Mackin, Sr. Esq.
36 Altrura Road
Weymouth, MA 02191**

kevin@mackinlawoffices.com

781-630-1061

September 14, 2021

Mr. Jeff Richards
Building Inspector and Zoning Enforcement Officer
Town of Weymouth
75 Middle Street
Weymouth MA 02189

Re: 450 Green Street

Dear Mr. Richards,

Pursuant to the provisions of section 7 of M.G.L. c. 40A (the Zoning Act) and the provisions of the Weymouth Zoning Ordinance, I write to you on behalf of **Kevin Kelly and Kathy Kelly**, as the Zoning Enforcement Officer of the Town seeking enforcement of that Ordinance regarding the subject premises in the following regards:

1. The subject premises are situated in an R-1, single family residential district. The current uses being made of that property by Mr. Zona are not in compliance with the requirements of that district and are therefore, nonconforming. I understand the premises had been operating as a pre-existing, non-conforming use. Upon researching the property at the Norfolk Registry of Deeds and the records for that location available in your office, I believe the premises are unlawfully operating well beyond the pre-existing use.
2. My review of the records maintained by the Building Department indicated to me that, at best, the premises may be used for the inside storage of funeral limousines based on a letter from Mr. Jeffrey Coates, Building Inspector, a copy of which is attached as Exhibit 1.
3. No action by the Board of Appeals has changed the use of the premises from the single use and limitations referred to in Exhibit 1.
4. The premises are readily observable from Green Street and that observation clearly shows that rather than a limousine service, the premises are being unlawfully used for outside storage of commercial vehicles, including fire equipment, auto detailing, an embroidery retail shop - none of which are permissible in the R1 district. Further, these unlawful uses were not permitted at the time of the adoption of that classification. Exhibit 1 clearly states there will be no outside storage of vehicles on the premises.
5. The Zoning By-Law of the Town clearly states that when a lawful, non-conforming use is abandoned for two years, the non-conforming status of the property is lost and thereafter the premises can only be used for the purposes specified in the zoning ordinance for that district. In other words, the premises can only be used for a single-family home.

6. While reviewing the file, I noted an application relating to the proposed use of the premises for embroidery and retail sales. That use is not permitted in an R1 district and has been unlawfully operating there for at least three years. On a technical level I was surprised the application was not signed or notarized as required and coincidentally was filed on the same day (July 7, 2021), Mr. Zona was served with a summons related to a civil action filed by my clients.
7. The pre-existing nonconformity never included mixed use. Mr. Zona and another individual are currently residing on the premises. This additional violation of the pre-existing, nonconforming use is not lawful because the nonconforming use was never for a mixed use of the subject premises.

Please provide a determination as to whether Mr. Zona has forfeited the pre-existing nonconforming business use and intends to conform with the limited use permitted in this R1 district.

The purpose of a zoning ordinance is to protect the health and safety of the citizens. The present unlawful uses of the premises create the following conditions which require your issuance of an order confirming the unlawful, non-conforming status of the present uses of the premises and the issuance of an order for a penalty of \$300 per day since each day of operation is a separate offense:

- (A) I estimate from my observation that there are at least 15 vehicles and other storage containers stored outside of the garage on the premises. The presence of combustible fuels (gas and diesel) in the tanks of those vehicles and possible other on-site tanks, creates a fire hazard for the surrounding properties. Additionally, some of the vehicles being stored on the Premises have large propane tanks. There is also an oil delivery truck stored on the premises. Please provide a determination by our Fire Chief that the unlawful uses are in fact a hazard to the surrounding residential properties.
- (B) The presence of vehicles and other related facilities containing petroleum products creates the risk of leakage from maintenance, use, or misuse. Such products will migrate onto adjoining premises. It is my understanding that facilities are now required, under the Environmental Protection Act, for the safe retention of petroleum-based products and other chemicals on a site where motor vehicles are stored. Please provide an opinion from the Board of Health regarding this concern.
- (C) I have personally observed a sign on the fence on the Green Street side of Mr. Zona's property, advertising rental space for vehicles on the subject premises. Obviously, that is an admission by Mr. Zona that he has abandoned the funeral limousine, indoor storage business use, permitted by Exhibit 1, and is now attempting to operate numerous businesses in violation of the limited, preexisting, nonconforming use. Neighbors in an R1 district should not be exposed to fumes, noise and other disturbances which Mr. Zona's current unlawful uses are causing.

As you undoubtedly know, the final sentence of the first paragraph of section 7 of M.G.L. c. 40A requires you to inform me, in writing, of whatever action you take within 14 days of receipt of this request.

Sincerely,

Kevin P. Mackin, Sr. Esq.

Cc: Clients - Kevin Kelly and Kathy Kelly

***Town of Weymouth
Massachusetts***

Jeffrey E. Richards, C.B.O.
Director of Municipal
Licenses and Inspections

Zoning and Building
Electrical, Plumbing and Gas
Licensing
Weights and Measures



Robert L. Hedlund
Mayor



DEPARTMENT OF MUNICIPAL LICENSES AND INSPECTIONS

TOWN HALL, 75 MIDDLE STREET, WEYMOUTH, MA 02189-1396 ~ Tel. (781) 340-5004 - FAX (781) 335-3283

September 29, 2021

Kevin P. Mackin, Sr., Esq.
Mackin Law Offices
36 Altrura Road
Weymouth, MA 02191

Via Email: kevin@mackinlawoffices.com

RE: 450 Green Street (Map 13, Block 121, Lot 16, R-1 Zone)

Dear Attorney Mackin:

I have received your letter dated September 14, 2021 via email; and find the following:

1. The subject property based on Town records and former BZA cases has been found to be consistent with the history of the former gravel yard located in an R-1 Zone.
2. The partial use of the property was formerly used as a 24-hour limousine business and storage yard as a service business; auto detail services; all activities and services being consistent with current uses.
3. No BZA applications have changed operations of use and are consistent with current activity on site as of a Certificate of Occupancy inspection performed on July 28, 2021.
4. See Item #2
5. The site has been in constant use and has not lost any pre-existing non-conforming uses as outlined above.
6. Embroidery services are consistent with current zoning ordinance. A recent Business Certificate and Certificate of Occupancy was filed on July 7, 2021 and signed for zoning suitability. Said Certificate of Occupancy was issued upon completion of site inspections on July 28, 2021.
7. The site is consistent with pre-existing non-conforming uses and has been found to be in compliance with the intent of the Zoning Ordinance.

As a result of the Certificate of Occupancy inspection performed on July 28, 2021, all activities as inspected were found to be in compliance as allowed under its pre-existing non-conformity and no safety issues or violations were noted at the time of inspection. An inspection was performed on September 15, 2021 and no changes were found to the site.

I hope this clarifies your client's review of activities noted on site.

As noted,



Jeffrey E. Richards, C.B.O.
Inspector of Buildings

cc: R. Luongo, Planning
J. Callanan, Legal

*Town of Weymouth,
Massachusetts*

Jeffrey R. Coates, R.A.
Director of Municipal
Licenses and Inspections

Zoning and Building
Electrical, Plumbing and Gas
Licensing
Weights and Measures



1

David M. Madden
Mayor

DEPARTMENT OF MUNICIPAL LICENSES AND INSPECTIONS

TOWN HALL, 75 MIDDLE STREET, WEYMOUTH, MA 02189-1396 ~ Tel. (781) 340-5004 - FAX (781) 335-3283 - TTY (781) 331-5124

August 8, 2002

David A. Kelly
Attorney at Law
400 Crown Colony Drive, Suite 200
Quincy, MA 02169

Re: 450 Green Street
(sheet 13, block 121, lot 16, R-1 Zone)

Dear Mr. Kelly:

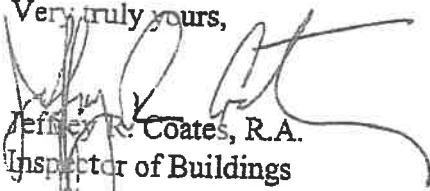
I have received and reviewed your letters dated July 11, and August 5, 2002, as well as the Town's record regarding the subject premises and find the following:

1. The subject property consists of an existing one story garage / storage building which is currently being used as a non-conforming contractors business with open-lot storage of trucks, equipment and building materials, located in the R-1, single-family, Residential Zoning District.
2. The documentation submitted by you indicates that the proposed use of the premises would be as a commercial garage for the storage of eight (8) funeral limousines.
3. The existing open-lot storage will be discontinued.
4. The purposed use is hereby deemed to be similar to the existing non-conforming use and the site will be less intensively utilized and therefore, it may continue per Subsection 120-39.

Accordingly, your client, Paul Mannix, doing business as Private Line Limousine Service, may operate at the premises, provided that the existing structure is not extended or changed without the benefit of a Special Permit as required per Subsection 120-40.

I trust this answer meets your current needs. Please contact me if you require anything further.

Very truly yours,


Jeffrey R. Coates, R.A.
Inspector of Buildings

cc: G. Lane, J. Clarke, and J. Richards
JRC/j - ZD 02.08.08