

# City of Malden

Massachusetts

Board of Appeal  
110 Pleasant Street  
Malden, Massachusetts 02148

RECEIVED

2017 APR 12 P 3:35

Telephone 781-397-7000 Ext. 2031

Fax 781-397-7362

CLERK'S OFFICE  
MALDEN, MASS.

## BOARD OF APPEAL

### DECISION

Meeting of March 15, 2017

47 Acorn Street

Page 1 of 2

#### **PETITION OF:**

Timothy Dooher made under Section 800.6.2.29 & 800.6.2.31 Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden, to appeal the decision of the Inspector of Buildings dated January 24, 2017 to Cease and Desist operation of a rooming house at the property known as and numbered 47 Acorn Street, Malden, MA and also known by City Assessor's Parcel ID #079-353-313. Petition is available for public review in the office of the Clerk of the Board of Appeal, 170 Centre Street, Malden, MA.

The property consists of approximately 16,151 square feet of land and is mainly classified as a three-family residential dwelling comprised of (3) units with (1) half bath, (16) rooms and (8) bedrooms.

#### **FINDINGS OF FACT AND DECISION**

All statutory notice requirements have been met and this petition is properly before the Board for hearing.

Attorney Andrew Tine on behalf of petitioner, Timothy Dooher, appeared before the Board on March 15, 2017 to appeal the decision of the Building Commissioner, dated January 24, 2017. The decision which is attached hereto and incorporated herein specifically identifies the violations to the Massachusetts State Building Code (780 CMR) and to the Zoning Ordinances of the City of Malden.

Attorney Tine stated the petitioner's position relative to the current use and occupancy and referenced an affidavit that had been submitted as part of the record for the Board's consideration. The affiant, Nicole White, is the Manager of Rise Above, the program located within the dwelling and which provides recovery services for women. The petitioner is seeking to overturn the Building Commissioner's Cease and Desist Order. Ms. White indicated that the occupancy and use at 47 Acorn Street by Rise Above has been certified by "MASH" (Massachusetts Association of Sober Housing), an organization she described as certifying properties for use and occupancy as now exists in the subject property.

Board Members considered the occupancy and use and concerns were expressed regarding the life and safety of the occupants and the existing safety violations. Additionally, the Chair noted that the Board was not allowed an interior inspection of the property. One Board member stated that despite his uneasiness, it appeared that the property was being used as a sober house which he believed fell under the protection of the Fair Housing Act.

Two immediate abutters to the property spoke in opposition and stated their concerns about using the property as a rooming house. No one besides Ms. White spoke in favor of the petition.

March 15, 2017

47 Acorn Street

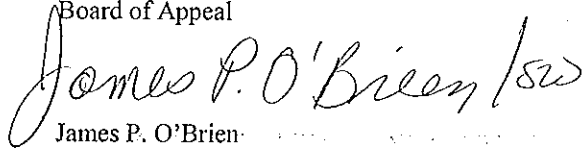
Page 2 of 2

After due hearing , upon motion of John King, seconded by Deano Summers the Board voted to overturn the Building Commissioner's Cease and Desist Order, dated January 24, 2017.

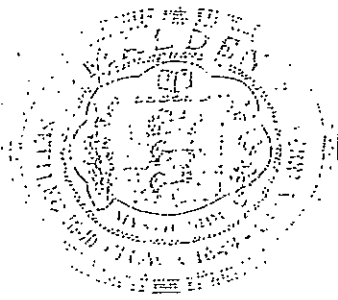
**MEMBERS OF THE BOARD VOTING WERE:**

James O'Brien	No
Clair Croken	Yes
Deano Summers	Yes
John King	Yes
Michael Steen	Yes

Board of Appeal

A handwritten signature in black ink that reads "James P. O'Brien" followed by a stylized flourish or initials "JSW".

James P. O'Brien  
Chairman



City of Malden - Permits, Inspections & Planning Service

110 Pleasant Street

Malden, MA 02148

P: 781.397.7000 X2027

Nelson L. Miller, CBO - Building Commissioner

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CITY CLERK'S OFFICE  
MALDEN, MASS.

## VIOLATION

Date 1/24/2017

Timothy Doohar  
47 Acorn Street  
Malden, MA 02148

Certified: 7013 3020 0000 7362 3920

RE: Violation at 47 Acorn Street, Malden MA

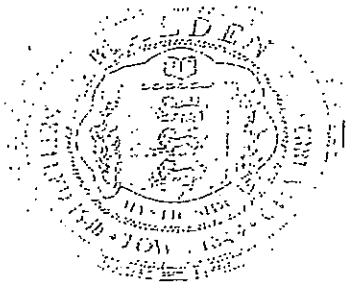
An inspection was made of the above referenced property by Building Commissioner Nelson Miller, Director of Public Health Chris Webb and Lt. Kevin Halpin from the Malden Fire Department which resulted in the discovery of the following violations of the 8<sup>th</sup> Edition of the Massachusetts State Building Code (780 CMR) and the Zoning Ordinances of the City of Malden

The property located at 47 Acorn Street is a legal 3 family residence. The property contains 3 dwelling units. The Zoning Ordinance of the City of Malden, Chapter 12, Revised Ordinances of 1991 as Amended through June 30, 2016 defines:

*800. 6. 2.29 Dwelling Unit: One (1) or more rooms providing living facilities for one (1) family including equipment for both cooking and sanitation or provisions for the same within the building in which the dwelling unit is located.*

*800. 6. 2.31 Family: One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.*

The second floor dwelling unit is currently occupied by 12 persons, none of which are related by blood, adoption, or marriage. Per the 8<sup>th</sup> Edition of the Massachusetts State Building Code (780 CMR), Amendments to the 2009 International Building Code:



City of Malden - Permits, Inspections & Planning Service  
110 Pleasant Street  
Malden, MA 02148  
P: 781.397.7000 X2027  
Nelson L. Miller, CBO - Building Commissioner

*BOARDING HOUSE. A building arranged or used as a "lodging house" as defined in M.G.L. c. 140, § 22.*

M.G.L. c. 140, § 22. States:

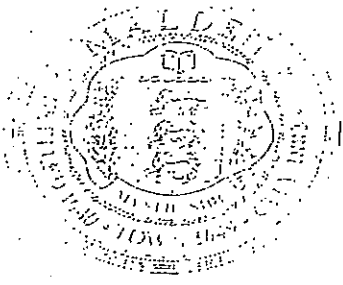
*"Lodging house", as used in sections twenty-two to thirty-one, inclusive, shall mean a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.*

The second floor dwelling unit is being illegally occupied. One of the following actions can be selected to remedy this violation:

1. The number of current occupants can be reduced to two people not related by blood, adoption, or marriage.
2. A new tenant, greater than two people who are related by blood, adoption, or marriage can occupy the building.
3. The building can become a licensed Boarding House with the City of Malden after approval by Building Department, Fire Department, City Council, and Planning Board. The building would be required to conform to all requirements of the Building Code governing this type of Occupancy.

**This Violation must be resolved within 30 days of the date of this letter**

You are hereby ordered to remedy the violations described above by the indicated date for resolution. Failure to comply with this order will result in noncriminal fines of up to \$1,000.00 per Violation and may result in criminal charges being filed, with associated penalties and fees.



City of Malden - Permits, Inspections & Planning Service  
 110 Pleasant Street  
 Malden, MA 02148  
 P: 781.397.7000 X2027  
 Nelson L. Miller, CBO - Building Commissioner

You have the right to contest this order through a hearing before the State Board of building Regulations and Standards (BBRS).

The request for a hearing must be made in writing, within 45 days of receipt of this letter, and sent to:

Board of Building Regulations and Standards  
 One Ashburton Place, Room 1301  
 Boston, Ma. 02108

If you have any questions regarding this order or the process for requesting a hearing, please contact me.

Sincerely,

Nelson L. Miller Jr., CBO  
 Building Commissioner  
 781.397.7000 x2027

Important! Please have this notice translated immediately.

¡Importante! Por favor haga traducir este aviso inmediatamente.

Importante! Fate tradurre questo avviso immediatamente.

Prè inpòtan! Fè tradui nòt sa a tousuit.

Important! Faites traduire cet avis immédiatement.

Importante! Mande traduzir este aviso imediatamente.

QUAN TRỌNG ! CẦN DỊCH CÁO THỊ NÀY LIỀN

重要！請立刻將本通知翻譯成中文。

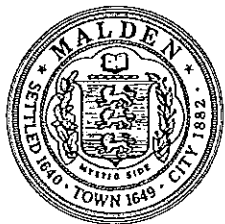
អំពីការសំខាន់ៗ! ត្រូវប្រែប្រួលការប្រកាសនេះឱ្យបានបន្ទាន់

Արարեալ. այս լայնտարադրուբիւնը անտիջիւպէս թարգմանել տուէք:

Προσοχή! Δώστε να σας μεταφράσουν αμέσως αυτή την ανακοίνωση.

សំខាន់ៗ! សូមបកប្រែនូវការប្រកាសនេះឱ្យបានបន្ទាន់

- (Spanish)
- (Italian)
- (Haitian Creole)
- (French)
- (Portugese)
- (Vietnamese)
- (Chinese)
- (Laotian)
- (Armenian)
- (Greek)
- (Cambodian)



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Telephone 781-397-7000 Ext. 2031  
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MALDEN, MASS.

## BOARD OF APPEAL

### DECISION

Meeting of March 29, 2017

47 Acorn Street

Page 1 of 2

### RECONSIDERATION OF THE PETITION OF:

Timothy Dooher made under Section 800.6.2.29 & 800.6.2.31 Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden, to appeal the decision of the Inspector of Buildings dated January 24, 2017 to Cease and Desist operation of a rooming house at the property known as and numbered 47 Acorn Street, Malden, MA and also known by City Assessor's Parcel ID #079-353-313. Petition is available for public review in the office of the Clerk of the Board of Appeal, 170 Centre Street, Malden, MA.

The Board of Appeal meeting duly called in accordance with the City of Malden ordinance and its by-laws was held in the John and Christina Markey Malden Senior Community Center, 7 Washington Street, Malden on Wednesday evening, March 29, 2017 at 6:30 p.m.

**Members Present:** Chairman, James O'Brien; Claire Croken; Deano Summers; John King and Michael Steen

On March 16, 2017, Board of Appeal member Michael Steen formally requested reconsideration of the vote taken by the Board at the hearing on March 15, 2017 to overturn the decision of the Building Inspector. This was on the petition noted above of Timothy Dooher made under Section 800.6.2.29 & 800.6.2.31 Chapter 12, Revised Ordinances of 1991, as Amended to appeal the decision of the Inspector of Buildings dated January 24, 2017 to Cease and Desist operation of a rooming house at the property known as and numbered 47 Acorn Street.

Mr. Steen indicated that the vote he had cast in favor of the petitioner was in error.

Chairman O'Brien read Mr. Steen's timely request for reconsideration into the record.

Michael Steene made a motion to allow for reconsideration which was seconded by Claire Croken. The Board voted to grant the request for reconsideration.

Motion carried and all were in favor.

**MEMBERS OF THE BOARD VOTING WERE:**

James O'Brien	Yes
Clair Croken	Yes
Deano Summers	Yes
John King	Yes
Michael Steen	Yes

Chairman O'Brien read the motion made by Member King at the public hearing on March 15, 2017 into the record. He further explained the significance of a "yes" vote which would be in favor of granting the

Petitioner's request to overturn the decision of the City's Building Commissioner and that a "no" vote would be to deny the petitioners request and affirm the decision of the Building Commissioner.

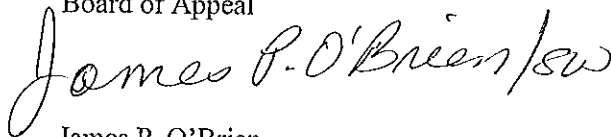
Upon John King's motion to grant the petitioners request, which was seconded by Deano Summers, the Board voted to deny the petitioners request and affirm the Building Commissioner's decision.

Two (2) members voted in support of John King's motion and three (3) members opposed.

**MEMBERS OF THE BOARD VOTING WERE:**

James O'Brien	No
Claire Croken	No
Deano Summers	Yes
John King	Yes
Michael Steene	No

Board of Appeal



James P. O'Brien  
Chairman