

REC'd 3-14-2023 Summons		CIVIL DOCKET NO. 2383CV00191	Trial Court of Massachusetts The Superior Court
CASE NAME: BNS, LLC vs. Zoning Board of Appeals for the Town of Rockland, et al.		Plaintiff(s) Defendant(s)	Robert S. Creedon, Jr. Clerk of Court Plymouth County COURT NAME & ADDRESS: Plymouth Superior Court 72 Belmont Street Brockton, MA 02301

THIS SUMMONS IS DIRECTED TO Zoning Board of Appeals for the Town (Defendant's name)

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint against you is attached to this summons and the original complaint has been filed in the Plymouth Superior Court.

YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.

1. You must respond to this lawsuit in writing within 20 days.

If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**

2. How to Respond.

To respond to this lawsuit, you must file a written response with the court **and** mail a copy to the Plaintiff's Attorney (or Plaintiff, if unrepresented). You can do this by:

- Filing your **signed original** response with the Clerk's Office for Civil Business, Plymouth Superior Court, 72 Belmont Street, Brockton, MA 02301 (address), by mail or in person **AND**
- Delivering or mailing a **copy** of your response to the Plaintiff's Attorney/Plaintiff at the following address:
Michael Ford, Esq., 245 Summer St, Ste 10, East Boston, MA 02128

3. What to Include in Your Response.

An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the facts alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your court no more than 10 days after sending your Answer.

CIVIL TRACKING ORDER
(STANDING ORDER 1- 88)

DOCKET NUMBER
2383CV00191

Trial Court of Massachusetts
The Superior Court



CASE NAME:

Bns, Llc vs. Zoning Board Of Appeals For Town Of Rockland et al

Robert S. Creedon, Jr., Clerk of Courts
Plymouth County

TO: Zoning Board Of Appeals For Town Of Rockland
242 Union Street
Rockland, MA 02370

COURT NAME & ADDRESS

Plymouth County Superior Court - Brockton
72 Belmont Street
Brockton, MA 02301

TRACKING ORDER - F - Fast Track

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		06/06/2023	
Response to the complaint filed (also see MRCP 12)		07/06/2023	
All motions under MRCP 12, 19, and 20	07/06/2023	08/07/2023	09/05/2023
All motions under MRCP 15	07/06/2023	08/07/2023	09/05/2023
All discovery requests and depositions served and non-expert depositions completed	01/02/2024		
All motions under MRCP 56	02/01/2024	03/04/2024	
Final pre-trial conference held and/or firm trial date set			07/01/2024
Case shall be resolved and judgment shall issue by			03/07/2025

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED

03/08/2023

ASSISTANT CLERK

PHONE

CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts
The Superior Court



PLAINTIFF(S): BNS, LLC
ADDRESS: 37 Bartlett Road, Plymouth, MA 02360
ATTORNEY: Michael W. Ford, Esq.
ADDRESS: FORD LAW P.C., 245 Sumner Street, Suite 110
East Boston, MA 02128
Tel/Fax 1 (617) 328-3400
BBO: 644807

COUNTY
Plymouth

DEFENDANT(S): Robert C. Rosa, III, Gregory Tansey, Timothy Haynes,
Robert Baker Jr., Robert Baker Sr. and Stephen Galley, as they are Members of the

Zoning Board of Appeals for the Town of Rockland

ADDRESS: 242 Union Street, Rockland, MA 02370

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.
C02

TYPE OF ACTION (specify)
Zoning Appeal

TRACK
F

HAS A JURY CLAIM BEEN MADE?

☒ YES

☐ NO

*If "Other" please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses	\$	
2. Total doctor expenses	\$	
3. Total chiropractic expenses	\$	
4. Total physical therapy expenses	\$	
5. Total other expenses (describe below)	\$	

Subtotal (A): \$

B. Documented lost wages and compensation to date

C. Documented property damages to dated

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):\$ N/A

CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claims(s):

The Plaintiff's Complaint is an Appeal pursuant to M.G.L. c. 40A § 17.

TOTAL: \$ N/A

Signature of Attorney/Pro Se Plaintiff: X

Date: 3/8/2023

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: 3/8/2023

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPT.
C.A. No.

BNS, LLC,

Plaintiff,

v.

ROBERT C. ROSA, III, GREGORY TANSEY,
TIMOTHY HAYNES, ROBERT BAKER, JR.,
ROBERT BAKER, SR., and STEPHEN
GALLEY, as they are Members of the ZONING
BOARD OF APPEALS FOR THE TOWN OF
ROCKLAND,

Defendants.

COMPLAINT

NOW comes the Plaintiff and hereby makes the following Complaint:

Introduction

This is an appeal pursuant to M.G.L. c. 40A §17 of a decision from the Zoning Board of Appeals for the Town of Rockland, denying a “use variance” concerning a proposal from the Plaintiff to legalize an existing non-conforming first floor rear residential unit at the property located at 18-20 East Water Street, Rockland, Massachusetts 02370. For the reasons stated herein, the Plaintiff seeks to annul the decision of the Zoning Board of Appeals.

Parties

1. The Plaintiff BNS, LLC (“Plaintiff”) is a Massachusetts limited liability company with a principal place of business at 37 Bartlett Road, Plymouth, Massachusetts 02360.
2. Upon information and belief, the Defendant Robert C. Rosa, III is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.
3. Upon information and belief, the Defendant Gregory Tansey is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.

4. Upon information and belief, the Defendant Timothy Haynes is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.
5. Upon information and belief, the Defendant Robert Baker, Jr. is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.
6. Upon information and belief, the Defendant Robert Baker, Sr. is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.
7. Upon information and belief, the Defendant Stephen Galley is a duly appointed member of the Zoning Board of Appeals for the Town of Rockland, with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.
8. Upon information and belief, the Defendant Zoning Board of Appeals (the "Board") for the Town of Rockland is a duly formed municipal body with a usual business address of 242 Union Street, Rockland, Massachusetts 02370.

Jurisdiction

9. This Court has jurisdiction pursuant to M.G.L. c. 40A §17.

Statement of Facts

10. The Plaintiff is owner of the property located at 18-20 East Water Street, Rockland, Massachusetts 02370, a single lot of approximately 3,375 in size (the "Plaintiff's Property"). A true and accurate copy of the deed to Plaintiff's property is attached hereto as Exhibit A.
11. The Plaintiff's Property is located in the B-1, Business I Zoning District under Section 415-13, and the Downtown Rockland Revitalization Overlay District under Section 415.21.2 of the Zoning Bylaws for the Town of Rockland (the "Bylaws").
12. Pursuant to Zoning Bylaw Section 415.21.2 A, the Downtown Rockland Revitalization Overlay District ("DRROD") was created by the Rockland Town Meeting to "encourage smart growth" in accordance with G.L. c. 40R (Smart Growth Zoning and Housing Production), to "facilitate mixed-use, diverse and affordable housing development," and "expand commercial and housing opportunity in Rockland's downtown area."
13. Additional objectives of the overlay district include increased housing production, enable a mix of uses along Union Street corridor, ensure predictable, fair, and cost-effective development review. Zoning Bylaw §415.21.2A(2).

14. To promote the purposes of the overlay district, Section 415.21.2E designates the “conversion of any existing building to a multifamily dwelling” as an as-of-right use.
15. The Plaintiff’s Property currently contains an existing non-conforming mixed-use structure, comprised of five (5) residential units, one of which is located at the rear of the first floor (the “Ground Floor Residential Unit”), and a single commercial unit on the street front of the ground floor.
16. Pursuant to §415.21.2, the Plaintiff may lawfully convert its existing mixed-use building to multifamily use, as-of-right, eliminating one commercial tenant and adding one residential tenant to the DRROD.
17. Pursuant to §415.21.2G of the DDROD bylaw, the minimum lot area per dwelling unit is 500 square feet, allowing for a potential 6 units, by-right, on a 3,375 square foot lot.
18. Upon information and belief, the Ground Floor Residential Unit has been used and occupied for residential purposes continuously since at least 1973.
19. The Ground Floor Residential Unit constitutes a lawfully pre-existing non-conforming use at the Plaintiff’s Property.
20. The Ground Floor Residential Unit is practically impossible to lease as a commercial space, due to its lack of access, parking, street-front visibility and spatial limitations.
21. Notwithstanding the lawful pre-existing nonconforming status of the structure, the building inspector’s office asserted that the ground floor residence was an illegal use.
22. In or around December 2022, the Plaintiff sought to “legalize” the existing Ground Floor Residential Unit by seeking a variance from the prohibition of ground floor residential use in a Mixed-Use Development contained in §415.21.2 E(1)(b)3(c).
23. The Board held a public hearing concerning the Plaintiff’s petition on January 3, 2023, and following a continuance requested by the Board at the conclusion of that hearing, a second public hearing was held on February 7, 2023.
24. Following the hearing held on February 7, 2023, the Board issued a 4-1 decision denying the Plaintiff’s request, finding that the Plaintiff failed to provide sufficient evidence establishing all of the elements for a use variance (the “Decision”). A copy of the Decision is attached hereto as Exhibit B.
25. The Decision was filed with the Town Clerk on February 21, 2023.

COUNT ONE – APPEAL PURSUANT TO M.G.L. c. 40A §17

26. The Plaintiff repeats each of the foregoing paragraphs as though specifically set forth herein.
27. The Decision of the Board is arbitrary, capricious, an abuse of discretion, and unsupported in law and in fact.
28. The Decision exceeds the authority of the Board.
29. On the basis of the foregoing, the Decision must be annulled.

Prayers for Relief

WHEREFORE, the Plaintiff requests that this Honorable Court grant him the following relief:

- A. That the Court enter a decision annulling the decision of the Board;
- B. That the Court grant the Plaintiff his costs of this action.
- C. That the Court award the Plaintiff's attorney's fees and costs.
- D. That the Court enter such other relief as it deems just and appropriate.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully Submitted,
BNS, LLC,
By its attorneys,



Michael W. Ford (BBO # 644807)
Peter B. Morin (BBO # 355155)
Ryan M. Gazda (BBO # 693573)
FORD LAW P.C.
245 Sumner Street, Suite 110
East Boston, Massachusetts 02128
Tel./Fax: (617) 328-3400
mford@fordlawpc.com

Date: March 8, 2023

Exhibit “A”

*** Electronic Recording ***

Doc# 00112373

Bl: 00776 Pg: 334 Page: 1 of 2

Recorded: 10/01/2021 02:10 PM

ATTN: John R. Buckley Jr. Register

Plymouth County Registry of Deeds

MASSACHUSETTS EXCISE TAX

Plymouth District ROD #11 001

Date: 10/01/2021 02:10 PM

Cell# 150007 00015

Fee: \$4,000.40 Com: \$800,000.00

QUITCLAIM DEED

I, KEVIN KANE, LLC, a Massachusetts Limited Liability Company, with a principal address of 100 Hawthorn Road, Braintree, MA 02184

for consideration paid in the amount of EIGHT HUNDRED NINETY THOUSAND AND 00/100 (\$890,000.00) Dollars,

hereby grant to BNS, LLC, a Massachusetts Limited Liability Company, with a principal address of 37 Darton Road, Plymouth, MA 02360

with QUITCLAIM COVENANTS

The land with front facing street, situated in Rockland, Plymouth County, Massachusetts, located on the northern side of East Water Street, bounded and described as follows:

SOUTHEASTERLY	by East Water, 37.93 feet,
EASTWESTERLY	by land now or formerly of Ethel Yarns, 90.40 feet,
NORTHWESTERLY	by lands of land now or formerly of Ethel Yarns and St. Alphonsus
	Catholic Total Abstinence Society, 40.75 feet; and
NORTHWESTERLY	by land now or formerly of Annie T. Brown, 79.77 feet.

The land contains 3,375 square feet and is shown on a "Plan of Land" in Rockland, Mass. Owned by Peter Sigmundus - Sup. 1, 1903", by C.L. Baxter, Haveren, Mass., Reg. Surv'y., and recorded in the Plymouth County Registry of Deeds in Book 3736, Page 25

The within conveyance is made subject to and with the benefit of covenants and restrictions of record made at the same are in force and applicable.

The Grantor's title in Deed recorded in Book 53924, Page 144

This deed releases any and all homestead rights created either automatically by operation of law or by a written declaration that is recorded. The Grantor waives any and all rights of Homestead under M.G.L.A. 90A:18 and no other individual are entitled to any rights of Homestead under M.G.L.A. 90A:18 in the premises conveyed herein.

B# 86776 Pg. 028

KEVIN KANE LLC

JK
By Kevin Kane, Its Manager

COMMONWEALTH OF MASSACHUSETTS

Notariable, as

September 29, 2022

On the date first above written, before me, the undersigned notary public, personally appeared KEVIN KANE, Manager of KEVIN KANE LLC, who provided me through satisfactory evidence of government-issued picture identification which was a State-Issued Driver's License, a State ID, a Passport, or Other Government-Issued ID, upon my personal knowledge of the undersigned, known by me and to me known to be the person who executed the foregoing document, and further acknowledged that he executed the foregoing as the person who executed, and who swore or affirmed to me the statements contained therein are truthful and accurate to the best of his knowledge and belief.

[Signature]
Notary Public
My Commission Expires:



Jeffrey Johnson
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
October 31, 2024

Exhibit “B”

TOWN CLERK, ROCKLAND
FEB 21 '23 PM5:59



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

Town Hall - 242 Union Street
Rockland, Massachusetts 02370
Phone: 781-871-0154, ext. 1195

FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

Decision: Denial of Use Variance

Applicant: Andrew Shanahan, Manager, BNS, LLC

Property Address: 18-20 East Water Street, Rockland, Massachusetts 02370

Case No.: 2023-01

The Rockland Zoning Board of Appeals has considered the application of Andrew Shanahan, Manager, BNS, LLC, with regards to the property located at: 18-20 East Water Street, Rockland MA 02370 for a Use Variance pursuant to §415-21.2(E)(3)(c), Downtown Rockland Revitalization Overlay District, and §415-89.1, Zoning Variances. The petitioner is proposing, if approved, to legalize an existing first floor rear residential unit. The property is located in the B-1, Business I Zoning District, §415-13 of the Bylaw, and is further identified as Lot 068, Map 45, on the Rockland Assessor's Maps. The owner of the property is BNS, LLC, Attn: Craig Borghesani, 1146 Oliver Ave., #C, San Diego, CA 92109.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

Advertised: December 8, 2022, and December 15, 2022, in the Patriot Ledger.

The Board lastly has taken into consideration testimony of the applicant, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties, all of which are incorporated herein by reference.

A Public Hearing was conducted remotely in accordance with the law at 7:30 P.M. on January 3, 2023, and a continuance public hearing was conducted remotely at 7:33 P.M. on February 7, 2023.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

ATTENDANCE:

Board Members: Gregory Tansey, Timothy Haynes, Robert Baker, Sr., Robert Baker, Jr., Stephen Galley, (alt). and Nicole Clement-Gomez (alt.). Robert C. Rosa, III, was absent and Gregory Tansey acted as Chairman.

Also present: Land Use Counsel Robert W. Galvin, Building Commissioner/Zoning Enforcement Officer Thomas Ruble, Fire Chief Scott Duffey, and Board of Health Agent Delshaune Flipp.

(All Board members were participating remotely)

MEMBERS VOTING: Chairman Gregory Tansey, Timothy Haynes, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley

DISCUSSION ON JANUARY 3, 2023

The Chairman of the Zoning Board introduced the members of the board advising the public that all are participating remotely and that the hearing is being recorded.

The Chairman asked the members of the ZBA for a roll call vote to open the public meeting. The ZBA members then took a roll call vote: Gregory Tansey – Yes, Timothy Haynes – Yes, Robert Baker, Sr. - Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes, Nicole Clement-Gomez – Yes. The vote was unanimous, and the public hearing was opened.

The Chairman read the advertised notice in the Patriot Ledger and Stephen Galley was appointed to take Robert C. Rosa, III's voting place.

The petitioner's attorney, James S. Timmins of 53 Willard Street, Quincy, Massachusetts, testified that the applicant claims to have pre-existing rights in the building in the rear unit on the first floor that is being used for residential purposes. The property is in the recently created Downtown Rockland Revitalization Overlay District and for that reason the legality of the unit was called into question. He stated that the variance requested would not cause any detriment to the public good, and that the overlay district was to create business uses on the first floor and also to allow for the provision of housing in the downtown area. He further stated that this building is suited for that with the exception of the rear unit which has no front facing space. He stated that when the current owners tried to engage with commercial users, they were unable to get any takers. He believes that there has been a residential unit on the first floor since 1993.

The Chairman then asked Mr. Haynes if he had any questions.

Mr. Haynes questioned the permit history to legally create this unit as a residential unit.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

Attorney Timmins stated that he had an application which was not previously submitted because it was undated. He then called on Mr. Ruble for further amplification. He also stated he had a MLS listing from November, 1993, and that document indicates that there is a mixed used with 5 residential units.

Mr. Haynes reiterated that he wanted to know if the unit legally pre-existed or if someone had illegally converted the unit to a residential apartment. He tabled his question until Mr. Ruble, the Zoning Enforcement officer, spoke on the matter.

Mr. Baker, Sr. asked how many parking spaces were required per the Zoning Bylaw for this building.

Attorney Timmins stated there were 5 striped spaces in the rear. He further stated that because this was pre-existing, that the number of spaces there are compliant due to non-conforming rights but that the current zoning requires 1.5 or 2 spaces per unit but certainly more than 5.

Off street parking was then discussed and it was noted that this was not allowed during the winter and during snow removal. Attorney Timmins advised that the applicant did own other property in the area where vehicles could be moved to.

Mr. Galley had no questions.

Ms. Clement-Gomez had no questions.

Mr. Tansey asked if the unit was presently being used as a residential use and Attorney Timmins stated it has been used as a residential unit since BNS purchased the property.

Mr. Baker, Jr. had no questions.

The Chairman then asked Attorney Galvin if he had any questions or comments as his concern was what would constitute a legal use of that space. Attorney Galvin opined that if someone issued a permit for that use more than 10 year ago that may have some bearing on the ability to have the unit removed if it existed and that either Mr. Ruble or the Fire Chief could speak on that.

The Chairman then asked Fire Chief Scott Duffey if he had any comments. The Fire Chief stated that there was a substantial fire in that building in 2019 he believed and that the building remained vacant for quite some time while repairs were made. Upon completion of the repairs, a Certificate of Occupancy was issued for businesses only on the first floor and residential on floors 2 and 3. It was also relayed to the previous owner by Deputy Fire Chief Thomas Heaney and himself that if any type of residential use was added to the first floor an automatic fire sprinkler system be added to the property in accordance with NFPA 13.

The Chairman then asked Health Agent Delshaune Flipp if she had any comments and she stated that the requirements of CMR 410 and her concerns if the unit does not meet the requirements for human habitation.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

Mr. Baker, Sr. then asked if the property had a dumpster and if they were fenced in. The Health Agent stated that in the spring all dumpsters would have to be enclosed pursuant to new regulations.

Mr. Ruble asked who the building inspector was on the application he had. There was no building official's name. The number 2469 was hand-written on it. He then explained the history of the building going back to the 1960s. He further stated that he had no knowledge of how the residential unit in the back was ever converted or permitted. He further stated that when the previous owner remodeled the building he told him that the apartment on the first floor was not allowed. He further stated that he agrees with the Fire Chief.

The Chairman then opened the meeting to the audience. No one spoke in favor. No one spoke in opposition.

He then asked Attorney Timmins if he had any further questions or statements. He wanted confirmation that Mr. Ruble did not agree that it was a residential unit back in the 60s and 70s and if he would have a problem if the Board did grant the relief sought. Mr. Ruble requested that the June, 2021, Occupancy Permit be shown and that it stated first floor retail and commercial, second and third floor residential; 4 residential units.

Mr. Baker, Jr. then asked Attorney Galvin what standard would have to be met for this variance and Attorney Galvin opined that it is the same standard as for a dimensional variance.

Mr. Haynes then asked about the fire and rebuilding of the property and if it was residential only on the second and third floors and Mr. Ruble answered that the owner at that time was told by both building and the Fire Department that the first floor was only to be commercial. There was a kitchen and a bathroom for an office that was turned into an apartment. The Fire Chief then stated that after the repairs after the fire that if there was a fifth residential unit added the building would have to have a fire sprinkler system as per state law but that was not done because it was only permitted for four units.

Mr. Galley asked Attorney Galvin about the overlay district and whether it stated the first floor had to be commercial and the upper floors could be residential. Mr. Haynes stated it was the same as B1, multi-family residences except on street level or below floors. Attorney Galvin stated that the district did allow multi-family dwellings and the conversion could be allowed and mixed-used development projects were discussed as well as residential development projects.

Attorney Timmins requested a continuance so that he could further discuss this with Mr. Ruble and Attorney Galvin.

Mr. Baker, Sr. then asked Chief Duffey if there was an apartment when the fire occurred and was told that a family lived there and Mr. Baker, Sr. then stated that it was an illegal apartment for many years. The Fire Chief also stated that the front unit was also being used as an illegal apartment as well.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

Mr. Haynes then stated that if granted a variance they would need to make a variance level of finding and Attorney Galvin stated variance standards are always vigorous standards and that variances have been granted in the past, although sparingly.

Mr. Tansey asked if there were other questions from the Board and hearing none, asked if the Board would consider the request for a continuance. Mr. Baker, Jr. stated he had no objection to granting a continuance as he did not see how the requirements can be met based on the presentation made to allow the variance.

Mr. Baker, Sr. makes a motion to continue the public hearing at the request of the applicant until the February 7, 2023, meeting.

Seconded by Mr. Baker, Jr.

Mr. Baker, Sr. also requested that the applicant speak with the Fire Chief about what type of system would have to be installed in the building if the variance was granted.

The ZBA members then took a roll call vote: Gregory Tansey – Yes, Timothy Haynes – Yes, Robert Baker, Sr. – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes, Nicole Clement-Gomez – Yes. The vote was unanimous, and the public hearing is continued.

DISCUSSION ON FEBRUARY 7, 2023

ATTENDANCE:

Board Members: Chairman Robert C. Rosa, III, Gregory Tansey, Timothy Haynes, Robert Baker, Sr., Robert Baker, Jr., and Stephen Galley (alt.).

MEMBERS VOTING: Gregory Tansey, Timothy Haynes, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley.

Also present: Building Commissioner/Zoning Enforcement Officer Thomas Ruble, Deputy Fire Chief Thomas Heaney and Assistant Land Use Counsel Anthony Riley.

(All Board members were participating remotely)

The Chairman introduced the members of the board advising the public that all are participating remotely.

The Chairman entertained a motion to open the public hearing which was seconded by Robert Baker, Jr. The members of the ZBA take a roll call vote to open the public meeting. Gregory Tansey – Yes, Timothy Haynes – Yes, Robert Baker, Sr. – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote was unanimous, and the public hearing was reopened.

The Chairman read the legal notice.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

Mr. Rosa then turned the Chairmanship of the meeting over to Mr. Tansey and stated that he would be an associate member for the rest of the hearing.

Chairman Tansey asked who the voting members were. He then asked Attorney Timmins to explain what had developed over the past couple of weeks.

Attorney Timmins stated the applicant spoke to the Fire Chief about the building being sprinklered and applicant agreed to do so if the relief was granted. He further stated that eliminating the commercial use and creating a residential property was reviewed by the applicant, who does not want to do that. As far as the variance standard, he feels that under the ordinance Rockland specifically allows use variances and that he feels that it is the applicant's position that he cannot attract a commercial tenant for the unit in the rear due to the shape of the building. The owners would like to keep the rear unit residential and that prior history has been that it has been used as a residential property and there is substantial evidence that the rear unit has been used for residential purposes. He also agrees that the residential unit may or may not be legal. He also discussed prior applications and building permits. He asked for relief legalizing the rear unit as a residential use and if granted it is consistent with the existing zoning for the district.

The Chairman opened the hearing to the Board.

Mr. Haynes asked for descriptions of the driveway and parking and describing access and the number of parking spaces.

Attorney Timmins stated there were 2 driveways; one is for access and on the other side is a common driveway to exit from the property and the parking is in the rear. 5 parking spaces, 1 vehicle per unit, and on-street parking for the commercial use.

Mr. Rosa stated that he reviewed the site plan and researched the old right of way but does not show parking on the left hand side. On the right hand side there is no existing easement for access to utilize that area as there is nothing in writing to grant it. He also asked about required parking. Attorney Timmins answered that they regard the parking to be pre-existing and not current to existing zoning regulations and that both driveways are common driveways.

Mr. Rosa then asked Deputy Fire Chief Heaney if he would be okay with this if the building was fully sprinklered if the unit in the back was approved.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

The Deputy Fire Chief said that after the fire, the owner did not want to sprinkler the building and that was how the fire alarm system was laid out. Mr. Shanahan was advised of that when he went to purchase the property but still moved a residential tenant into the unit. The Deputy Fire Chief also had a conversation with the applicant when he was in the process of moving in another residential tenant after the prior one had moved out and told him he could not move anyone into that back unit. He stated that applicant called him the other day about putting in a sprinkler system in the building.

Mr. Rosa then asked Mr. Ruble for comment. Mr. Ruble agreed that the first floor residential unit is not allowed. He stated that they also had to take out the front residential unit prior to the applicant owning the building. He discussed prior applications and building permits.

Mr. Ruble then asked Attorney Timmins whether the tenant would stay while the building is being sprinklered or does the building get sprinklered and then a tenant is allowed to move in. Attorney Timmins stated fire extinguishers could be provided.

Mr. Galley asked about the 5 units and if anything states the 5 units are legal. He also asked about the parking spaces and whether if the fifth residential unit is approved, would the current parking spaces be sufficient. This led to a discussion about parking and off street parking under the current Zoning Bylaws.

Attorney Riley stated current requirements are 3 spaces per unit in the B1 for a multi-family building.

Mr. Rosa stated the matter before the board is whether the use variance is appropriate for this property and that is the only thing to be taken into consideration and does a use variance work for this particular piece of property. This was confirmed by Attorney Riley.

Mr. Baker, Jr. asked Deputy Fire Chief Heaney if the fire alarm system installed in the building was not in contemplation of a residential unit on the first floor. The Deputy Fire Chief confirmed this and that the current first alarm system would have to be reconfigured if the relief was granted but it would not be a major deal to do so. He also wanted confirmation from the Deputy Fire Chief that at the applicant was told that he could not move a residential tenant into that unit which the Deputy Fire Chief confirmed. Mr. Baker, Jr. also pointed out that although 5 units may have been put on an application, it does not specify where the units are. He then asked Mr.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

Timmins if it was his client's opinion that it is impossible to rent out the rear unit for a commercial use or if it was more convenient to rent it out as residential.

Mr. Baker, Sr. asked Attorney Riley if past history of that unit could be taken into consideration even though it was illegally being used as an apartment and Attorney Riley stated it could.

Mr. Tansey asked if there was currently a residential tenant occupying the unit. Attorney Timmins asked Mr. Ruble and Mr. Ruble stated that he believed there was and then asked when they tried to find a commercial or office tenant because as soon as one residential tenant moved out another resident moved in and the apartment was never vacant. Attorney Timmins contacted Mr. Shanahan and verified there was a residential tenant there currently. Mr. Baker, Sr. stated the residential tenant was there illegally without a sprinkler system.

Mr. Ruble then asked Deputy Fire Chief Heaney if he remembers how much time there was between the residential tenant moving out and the new one moving in and he answered the Fire Department was there for the illegal storage of 2 motorcycles and gas fumes in the building and he believes that there was a new tenant lined up to move in there which the owner knew was not allowed after speaking with both the Fire Chief and the Building Inspector. There was discussion about making the entire building residential.

Mr. Baker, Sr. makes a motion to close the public portion of the hearing.

The Chairman then opens the hearing to the public for comment. No one spoke in favor. No one spoke in opposition.

Mr. Baker, Sr. makes a motion to close the Public Hearing.
Seconded by Mr. Baker, Jr.

A roll call vote was taken: Mr. Tansey – yes; Mr. Haynes – yes; Robert Baker, Jr. – yes; Mr. Robert Baker, Sr. – yes; and Mr. Stephen Galley – yes.

Mr. Rosa then told the applicant the Board would deliberate tonight and welcomed him to be present during deliberations and informed him they will receive a decision in the mail with a date stamp and informed him of his obligations to request a certificate of no appeal. If no one has appealed to the Town Clerk, the certification and an attested copy of the original decision will need to be recorded at the Registry of Deeds to be valid, and the applicants must provide proof of recording to the Building Department.

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

DELIBERATION.

The Board was in agreement that just because a residential unit may have been there at some time, it does not justify allowing a new one after the use was discontinued. The Board additionally discussed that the granting of the proposed variance would grant a bad precedent for other owners and that the town is trying to revitalize the center area to bring in business. The Board discussed that it was also not persuaded that the owner had made an effort to market the unit for the permitted commercial use. The Board also found that it had been previously decided by building owners that a fifth residential unit was not desirable. The denial of the variance would not result in the deprivation of a reasonable use of the property.

DECISION:

The Chairman entertains a motion either for or against the granting of the variance.

Robert Baker, Sr. makes a motion to deny the use variance.

Seconded by Robert Baker, Jr.

The Board takes a vote in favor of denying the use variance with members, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley in favor of denying the use variance and Mr. Timothy Haynes in favor of granting the use variance.

The vote is 4 in favor of denying the use variance and 1 in favor of granting the use variance. The use variance has been denied and does not pass.

FINDINGS:

The Board found that the applicant did not provide sufficient evidence establishing all of the elements needed for a use variance. Also, there is a history of municipal enforcement against these types of configurations.

REASON FOR DECISION: The Board finds that the granting of relief as requested would set poor precedent. The Board was informed that the Town has aggressively enforced the provisions of this B1 district and has even filed lawsuits in the past and gone to court and had a trial on the merits to win the case similar to this. As such, with the evidence presented at this hearing, the Board had adequate information upon which to make specific findings as to the impact of the proposed uses as required by the Variance standards as found in the Zoning Bylaw subsection 415-89.1.B and found that the proposed use did not meet such standards. The Board

Applicant: Andrew Shanahan, Manager, BNS, LLC
Property Address: 18-20 East Water Street, Rockland, MA 02370

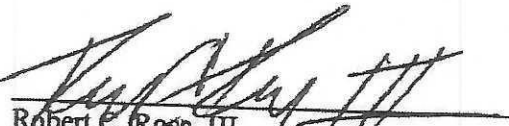
found that there were no conditions and circumstances that were unique to the applicant's lot, structure or building and do not apply to the neighboring lands, structures or buildings in the same district; that strict application of the provisions of the Bylaw would not deprive applicant from making a reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands, structures or buildings in the same district without the requested relief; that the unique conditions and circumstances are the result of actions of the applicant taken subsequent to the adoption of this Zoning Bylaw; and that the relief, if granted, would cause substantial detriment to the public good and impair the purposes and intent of this bylaw which was to favor in this area a commercial use.

NOTE:

- ◆ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ◆ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ◆ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

By:


Robert C. Rosa, III
Chairman