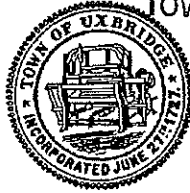


JAN 10 '18 AM 10:38

Rob Knapik, Member  
John Gniadek, Member  
Joseph Frisk, Alternate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
Uxbridge, MA 01569  
508-278-8600 x2013 p  
508-278-0709 f

ZBA Case #: FY18-05

Zone: **Business**

Owner: **Robert Kiley**

Property Address: **50 South Main Street**

Assessor's Reference Map: **25** Parcel: **987**

Worcester District Registry of Deeds References: Book: **45277** Page: **304**

## **M.G.L.A 40A Section 6 DETERMINATION DECISION**

**Decision Date: January 3, 2018**

**BACKGROUND:** The applicant/owner of record **Robert Kiley**, is seeking a Decision by the ZBA on his application for a Determination under M.G.L. 40A section 6, on property located at 50 South Main Street, Uxbridge, MA 01569 shown on the Town of Uxbridge Assessor's Map 25, Parcel 987 and recorded in the Worcester County District Registry of Deeds book 45277 page 304. The property is located in the Business Zoning District. The applicant seeks confirmation that the use of the property is a legally existing four-family dwelling.

**VOTING MEMBERS PRESENT:** Rob Knapik, John Gniadek, and Joe Frisk

**SUBMITTALS:** Application form and materials were received on December 12, 2017 including the certified abutters list and plans of the property.

### **PRESENTATION / DELIBERATIONS / FINDINGS OF FACT:**

At a meeting of the Town of Uxbridge Zoning Board of Appeals, a duly noticed public hearing was opened and closed on January 3, 2018.

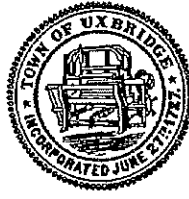
Attorney Mark Wickstrom appeared and spoke on behalf of the applicant. No abutters attended the meeting.

The property is in the Business zone. There is a pre-existing, non-conforming residential use of this property as a multifamily dwelling for many years, well prior to the adoption of the zoning bylaws. There are currently four dwelling units at the premises. Unfortunately, it is unclear from the Town records when the property was first used for four dwelling units as town records were destroyed in a flood at Town Hall. This petition is to confirm the legal use as a four-family dwelling.

Mr. Kiley has owned and occupied the property since 2009 and occupies it with his family. When he bought the property, it had the same four residential units that exist today. Mr. Kiley has pulled work permits since his ownership, notably for re-siding the entire structure and more recently pulling permits to upgrade the electrical system to include four separate electrical services and a fifth landlord service. Mr. Kiley encountered no problems obtaining those permits and performing the work upon the four-family dwelling.

In the process of recently trying to sell the property, Mr. Kiley was informed by the Buyer's attorney that there were discrepancies in town records as to how many units were at the property, and that this would hold up the sale. In confirming the loss of records by a flood in 2003, the Building Department was unable to confirm when the four dwelling-unit use began. It appears that the work done to the rear unit was approximately done in the 1980's, although it is unclear if that work added a fourth unit or merely modernized it. Mr. Kiley was informed by the building department that he should apply for a special permit to legalize the current use as a four-unit dwelling.

Rob Knapik, Member  
John Gniadek, Member  
Joseph Frisk, Alternate Member



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## **DECISION**

ZBA Case #: FY18-05

Zone: **Business**

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The petitioner requests that the Board allow the petition by either finding 1) that the use of the premises as a four-family residential dwelling pre-exists the zoning bylaws as a legal pre-existing, non-conforming use and thereby is a protected "grandfathered" use; OR 2) that the use of the property as a pre-existing non-conforming residential dwelling is extended to no more than four dwelling units under Chapter 40A section 6 and under Uxbridge Zoning Bylaw Section 400-12.

The petitioner requests that the Board find that such extension to four units is not more detrimental to the neighborhood than the prior pre-existing, non-conforming use. As evidence for such a finding, the Board takes note that the current use as a four-family dwelling unit has continued uninterrupted for at least thirty years and possibly many more, and that the substantial work to the property has made it an improvement, not a detriment to the neighborhood, and the surrounding property values.

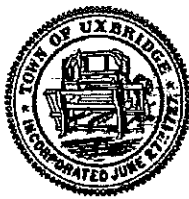
During deliberations, the Board agreed the evidence submitted supports a finding that this has been a longstanding non-conforming use as a four (4) family dwelling predating the zoning bylaws and as such, pursuant to 40A section 6, it is not detrimental to the neighborhood.

### **MOTION / VOTE:**

Mr. Frisk made a **MOTION** to close the Public Hearing FY 18-05 for 50 South Main Street. **MOTION SECONDED** by Mr. Gniadek passed unanimously by roll call vote of 3-0-0 (John Gniadek – aye, Rob Knapik – aye, Joe Frisk – aye).

Mr. Frisk made a **MOTION** that the Board finds for FY18-05 at 50 South Main Street under 40A section 6, the use of the property as a four family residential dwelling pre-exists the zoning by-laws as a legal pre-existing, non-conforming use and is not more detrimental to the neighborhood based on the information provided to the board and therefore is protected as a "grandfathered" use. **MOTION SECONDED** by Mr. Gniadek passed unanimously by roll call vote of 3-0-0 (John Gniadek – aye, Rob Knapik – aye, Joe Frisk – aye).

Rob Knapik, Member  
John Gniadek, Member  
Joseph Frisk, Alternate Member



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## DECISION

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## SIGNATURE PAGE

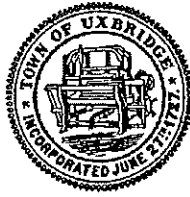
Rob Knapik, Member

John Gniadek, Member

Joe Frisk, Alternate Member

January 3, 2018  
Date

Rob Knapik, Member  
John Gniadek, Member  
Joseph Frisk, Alternate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
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## **DECISION**

ZBA Case #: **FY18-05**  
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**Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.**

I hereby certify that twenty (20) days has elapsed from the file date and no appeal has been filed in this office.

A true copy:     **ATTEST**

\_\_\_\_\_  
Town Clerk, Kelly Dumas or  
Assistant Town Clerk

\_\_\_\_\_  
Date

Town Seal

**\*\*THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS  
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.  
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. \*\***