

The Commonwealth of Massachusetts
TOWN OF LENOX

Filing fee is due with the petition. If hearing expenses exceed this amount the Zoning Board of Appeals will bill the petitioner.

The undersigned hereby petitions the Town of Lenox Zoning Board of Appeals for:

- ☐ A Special Permit for exception under the provisions of Section _____ of the Town of Lenox Zoning By-Law.
- ☐ A Variance from the following provisions of Section _____ of the Town of Lenox Zoning By-Law.

To permit the following use or activity (describe proposed use or activity):

Administrative appeal from attached building inspector permit denial. Narrative is attached.

For premises:

Owner of Record Anthony and Catarina Gallo Trustees of Gallo Family Revocable Trust
Address 15 + 17 Franklin St.
Map and Parcel Map 43 Parcel 82 and 83
Zoned as C
Deed Reference Book _____ Page _____

(This information is available from the Assessor's Office or townoflenox.com in the Property Assessments-Online Database section.)

Petitioner Anthony Gallo Trustee JPC
(Your signature here also acknowledges that you agree to pay all hearing expenses relative to this petition.)

Address (Mailing Address) c/o Lynch Scrime PO Box 1787 Lenox MA 01240
Telephone Number 413 637 1300
Email address lynch@lenoxattorney.com
Date 6-1-2022



Lynch Scrimo

Attorneys

Jeffrey R. Lynch
lynch@lenoxattorney.com

Jeffrey T. Scrimo
jeff@lenoxattorney.com

June 1, 2022

Town of Lenox
Zoning Board of Appeals
6 Walker Street
Lenox, MA 01240

RE: 15 & 17 Franklin St.
Map 43, parcel 82 and parcel 83

Dear Members of the Zoning Board of Appeals:

Anthony and Catarina Gallo, Trustees of the Gallo Family Revocable Trust appeal the Building Commissioner's findings in his letter of May 4, 2022.

The issue arises from the use of 15 & 17 Franklin Street as a restaurant, Prime Italian Steakhouse and Bar ("Prime"). The properties are each improved with a building. The patio between the two buildings is utilized for outdoor dining. Prime installed a canopy over the patio which spans between the two buildings. On the north side of the patio, a canopy was constructed from pressure treated lumber and a corrugated roof. The building commissioner objects to the canopy because he found that said construction does not meet the setback requirements pursuant to Zoning Bylaw section 6.1.10.

Both 15 & 17 Franklin Street are non-conforming lots because neither lot has adequate frontage, and the lot size is less than 5,000 sq. ft. each. As stated, both lots are also in common

Village Center | 68 Main Street
PO Box 1787 | Lenox, MA 01240
p. 413.637.1300 | f. 866.230.7304

ownership. For zoning purposes, the lots have merged¹; therefore, the Building Commissioner's initial finding that the canopy cannot span both parcels is not correct. For purposes of a zoning analysis the assessors lot lines are not determinative.

Moreover, Table 6.1.1 does not set a minimum set back distance within the C district.

For set back distances, the reader is directed to Section 6.1.10 which states

In view of small and irregular lot sizes in the C District, applications for new building will be accepted for consideration based on areas no less than current lot sizes. Fireproof walls on one side to the lot line are permissible if there is at least 15' setback on the other side of the building.

The first question is the use of the phrase new building. The second sentence provides further context to the intent behind the bylaw which is that when a new building is constructed in the C District, a fireproof wall can be constructed on the property line provided the adjacent building is 15 feet from the wall. For this reason, the application of 6.1.10 is misapplied to the construction of a simple canopy, or decking roof over the patio.

Respectfully submitted,
LYNCH SCRIMO
For Prime Italian Steakhouse and Bar

Jeffrey R. Lynch

¹ See Mauri v. Zoning Board of Appeals of Newton, 83 Mass. App. Ct. 336, 343 (2012)(citing rule that adjacent undersized lots for zoning purposes are treated as a single lot).

5'

SF

74.83'

82

4,356 SF

54.75'

74.6'

47.94'

74.5'

68.5'

83

4,692 SF

74.5'

8

4,3

4

125 sq.



2015 00863570

Bk: 5498 Pg: 173 Doc: DEED
Page: 1 of 4 01/14/2015 11:01 AM

Quitclaim Deed

17 Franklin St., Lenox, MA 01240

We, ANTONIO GALLO a/k/a ANTHONY GALLO, AND CATERINA GALLO husband and wife, of Lenox, Massachusetts, for no consideration paid, as this is a transfer and not a sale, grant to ANTHONY GALLO AND CATERINA GALLO, CO-TRUSTEES OF THE GALLO FAMILY REVOCABLE TRUST, u/d/t dated December 11, 2014 with a certificate of Trust recorded in the Berkshire Middle District Registry of Deeds in Book 5498 Page 166 with a postal address of 73 Dunmore Court, Lenox, Massachusetts, 01240, with QUITCLAIM COVENANTS, the land situated in the Town of Lenox, Berkshire County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

Beginning in the northerly line of Franklin Street at the southeasterly corner of land formerly of Louis H. Regnier, now or formerly on one Cowhig;

Thence northerly along said Cowhig's easterly line 74 ½ feet to land formerly of Henry Sedgwick, now of the Berkshire County Home for Aged Women;

Thence easterly along the line of said Berkshire County Home for Aged Women 60 feet 8 ½ inches to land formerly of Parsons, now of one Beneat;

Thence southerly along said Beneat's line 74 ½ feet to said northerly line of Franklin Street;

And thence westerly 60 feet 8 ½ inches in said line o said Street, to place of beginning.

Being all the same premises conveyed to the Grantor hereby by deed of Judith Lerner recorded May 9, 2011 in the Berkshire Middle District Registry of Deeds in Book 1912, Page 142.

Witness my hand and seal this 19 day of Dec 2014



ANTONIO GALLO, a/k/a ANTHONY GALLO

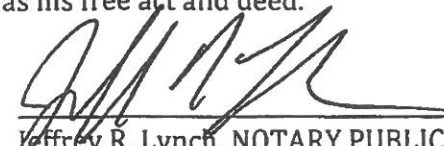
Commonwealth of Massachusetts

Berkshire County, ss.

On this 19 day of Dec 2014, before me the undersigned notary public, Antonio Gallo, personally appeared, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as his free act and deed.



JEFFREY R. LYNCH
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 7, 2019



Jeffrey R. Lynch, NOTARY PUBLIC
My Commission Expires: 11/07/2019

Witness my hand and seal this 23 day of Dec 2014

Caterina Gallo

CATERINA GALLO,

Commonwealth of Massachusetts

Berkshire County, ss.

On this 23 day of Dec 2014, before me the undersigned notary public, Caterina Gallo, personally appeared, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as her free act and deed.



JEFFREY R. LYNCH
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 7, 2019

Jeffrey R. Lynch
Jeffrey R. Lynch, NOTARY PUBLIC
My Commission Expires: 11/07/2019



2015 00863571

Bk: 5498 Pg: 177 Doc: DEED

Page: 1 of 4 01/14/2015 11:01 AM

Quitclaim Deed

15 Franklin St., Lenox, MA 01240

We, ANTONIO GALLO a/k/a ANTHONY GALLO AND CATERINA GALLO husband and wife, of Lenox, Massachusetts, for no consideration paid, as this is a transfer and not a sale, grant to ANTHONY GALLO AND CATERINA GALLO, CO-TRUSTEES OF THE GALLO FAMILY REVOCABLE TRUST, u/d/t/ dated December 11, 2014 with a certificate of Trust recorded in the Berkshire Middle District Registry of Deeds in Book 5498 Page 166 postal address is 73 Dunmore Court, Lenox, Massachusetts, 01240, to hold as Tenants by the Entirety, with QUITCLAIM COVENANTS, the land situated in the Town of Lenox, Berkshire County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

Beginning at a point in the northerly line of Franklin Street, it being the southeast corner of land conveyed by Joseph T. Cowhig to William F. Dunn and Loretta F. Dunn by deed dated October 3, 1929, and recorded in the Berkshire Middle District Registry of Deeds, in Book 448, Page 102, and it also being the southwest corner of the parcel of land now being described;

Thence running easterly in said northerly line of Franklin Street forty-seven and 94/100 feet, more or less, to land now or formerly of one O'Dea;

Thence northerly in said O' Dea's west line seventy-four feet and six inches more or less to land formerly of Manton R. Sedgwick;

Thence westerly in the south line of said land formerly of said Sedgwick fifty-four and 75/100 feet more or less to an iron pipe driven in the ground at the northeast corner of land conveyed by Joseph T. Cowhig to William F. Dunn and Loretta F. Dunn by deed dated October 3, 1929, and recorded in the Berkshire Middle District Registry of Deeds in Book 448, Page 102;

And thence southerly in the easterly line of said land of said Dunn seventy-four and 83/100 feet more or less to the northerly line of Franklin Street at the point of beginning.

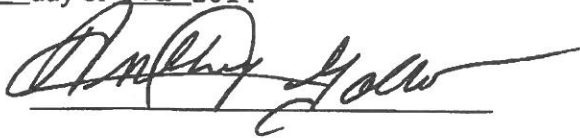
Also hereby granting a right of way over a strip of land used as a walk on the westerly side of said real estate about four feet and nine inches wide westerly from the westerly line of said above described real estate to and from Franklin Street.

The above described premises are subject to a right of way over a strip of land used as a walk about four feet and nine inches wide easterly of the westerly line of said above described premises to and from Franklin Street.

Also the above described premises are subject to a right of way over a strip of land seven feet and three and one-half inches wide on the easterly side thereof as reserved in a deed of John O'Dea to Louis H. Regnier dated July 30, 1907, and recorded in said Registry in Book 341, Page 306, to which deed and its record reference is hereby made so far as the same may be in force.

Being the same premises conveyed to the Grantor herein by deed of Alan Weinman, recorded on August 30, 1988 in the Berkshire Middle District Registry of Deeds in Book 1245, Page 816.

Witness my hand and seal this 19 day of Dec 2014



ANTONIO GALLO, a/k/a ANTHONY GALLO

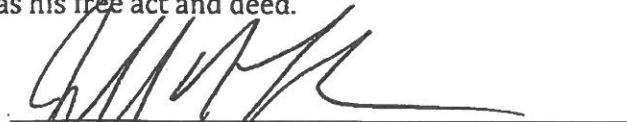
Commonwealth of Massachusetts

Berkshire County, ss.

On this 19 day of Dec 2014, before me the undersigned notary public, Antonio Gallo, personally appeared, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as his free act and deed.



JEFFREY R. LYNCH
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 7, 2019


Jeffrey R. Lynch, NOTARY PUBLIC
My Commission Expires: 11/07/2019

Witness my hand and seal this 23 day of Dec 2014

Caterina Gallo

CATERINA GALLO,

Commonwealth of Massachusetts

Berkshire County, ss.

On this 23 day of Dec 2014, before me the undersigned notary public, Caterina Gallo, personally appeared, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as her free act and deed.



JEFFREY R. LYNCH
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 7, 2019

Jeffrey R. Lynch
Jeffrey R. Lynch, NOTARY PUBLIC
My Commission Expires: 11/07/2019



OFFICE OF THE LEE-LENOX
BUILDING INSPECTOR

Lee Town Hall 32 Main St Lee MA 01238
PH: 413.243.5518



Date: 5.4.2022

RE: denial of application for permit to construct canopy 15 Franklin St

Mr. John Martino (applicant)
700 East St, Lenox MA 01240

Mr. Anthony Gallo (owner)
73 Dunmore Court, Lenox MA 01240

Mr. Martino & Mr. Gallo:

The Lenox Building Inspector is in receipt of your application for permit to construct a wood-framed canopy at 15 Franklin St, Lenox (Map 43, Parcel 82) which shall span the propertyline between 15 Franklin and 17 Franklin (Map 43, Parcel 83), thereby connecting both properties and both buildings which are separate parcels/buildings. Both parcels, 15 & 17 Franklin St, are located in the C (Commercial) Zoning District.

As one of the duly appointed authorities tasked with enforcing the Lenox Zoning Bylaws (section 3.2.1), this letter serves as notification that your application for permit to construct the wood-framed canopy is denied, based upon the failure to comply with side yard setbacks and fire-resistant construction as required by Lenox Zoning Bylaws, section Table 6.1.1 Dimensional Requirements and 6.1.10. The proposed canopy spans 2 separate parcels (Parcels 82 & 83, 15 and 17 Franklin, respectively) resulting in a 0'-0" side-yard setback dimension while having the less than 15' clear open side yard setback on the opposite side of parcel 82 at 15 Franklin St (Bylaw section 6.1.10). Additionally, the proposed wood-framed canopy is not of fire-resistant construction as required by that same Lenox Zoning Bylaw section 6.1.10.

If you so choose, you may lawfully combine both parcels to create a single parcel which would eliminate the setback requirement, thereby relieving you from the side yard dimensional requirements outlined in Lenox Zoning Bylaws. While both parcels 82 and 83 remain separate lots, the construction proposed in your application for permit, which spans 2 separate parcels, cannot be permitted as it violates Lenox Zoning Bylaw Table 6.1.1 and section 6.1.10 as referenced by T6.1.1.

If you are aggrieved by this denial, you have the right to appeal said denial to the Lenox Zoning Board of Appeals, as allowed by MGL 40A and Lenox Zoning Bylaw section 3.3.2 #1 within 30 days of the date of this notification letter.

Respectfully,
Don Fitzgerald
Lee-Lenox Building Inspector & Zoning Enforcement Officer
Office: 413.243.5518
Cell: 413.329.7267
Email: dfitzgerald@town.lee.ma.us