

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
MAY 12, 2011**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Brian Gildea, Acting Chair; Angelo Colasante, Acting Clerk; Kenneth Gordon; Carol Amick; Stephen Henning

ABSENT: Jeffrey Cohen, Chair; Jeffrey Dearing, Vice Chair

GUEST: Christopher Laskey, Code Enforcement Director

Mr. Gildea, Acting Chair, introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members introduced themselves.

PRESENTATION: Mr. Colasante, Acting Clerk, read the notice of the meeting.

PETITION #025-11 – Angela Valliere, 142 Page Road, seeks to appeal the Building Inspector's determination of the legal occupancy of the structure.

Attorney Kenneth Leitner, the attorney representing the applicant, introduced himself and said he is also a Bedford resident of 111 Springs Road. He introduced Ms. Valliere, who is his client and the applicant for 142 Page Road. He said that the house at 142 Page Road has been used and rented as a three-family dwelling since Ms. Valliere and her husband bought it in 1977. He stated that she now seeks the Board's approval to allow the continued use of the premises as a prior non-conforming three family home.

Mr. Leitner went through the application packet provided for the Board and noted that there is a lack of thorough records on the property, which is not uncommon for old municipal files in any town. He said that the oldest permit they have been able to obtain is from 1951, which shows that the prior owner, Harold Kimball, received a Building Permit to make alterations to the property. He added that there are also permits from the 1970s and 1980s showing that three water meters and three electrical boxes were installed, so it was clear even then that there were not only three units but that no one ever tried to hide this fact from the Town. He noted that the application packet includes a letter from the one of the prior tenants, Mark Raffa, who notes that when he lived in the house, from the early 1980s until the fall of 1988, the house was always used as a three-family. Mr. Leitner added that no structural changes have ever been made to this property, which is another fact that leads him to believe this has always been used as a three-family.

Mr. Leitner explained that there was a similar case to this one at 81-83 South Road, where the applicant petitioned for the continued use of the house as a three-family

dwelling and was granted that use by the Zoning Board. He said there were similar issues with that case involving the distinct lack of records on the property, but the Board still granted the use, so there is precedent for a grandfathered three-family house in Bedford. He said he feels that the applicant's case here is even stronger than the 81-83 South Road case, and he believes the use of this three-family home should be allowed to continue.

Mr. Leitner reiterated that Ms. Valliere has used this property as a three-family dwelling for decades now without trying to hide its use or make any changes without getting all required approvals, so it is clear that she is a good citizen and neighbor.

Ms. Valliere stated that she has been a Bedford resident for over 30 years, and in all that time she has always known this property to be a three-family dwelling, as it was sold to her as such. She said that she has always had many inspectors and other Town officials out to the property and made it clear to everyone that it was a three-family property. She talked about the various tenants who have lived in the house over the years, including veterans and Section 8 individuals. She explained that her son was in a tragic accident two years ago, and he is very fortunate to be able to rent this property from her, as Bedford is very expensive and her son would not be able to afford staying in town otherwise. She said she has always been a good neighbor and landlord and has been fortunate to live in such a beautiful community, and she appreciates the Board's consideration to allow the continued use of this three-family home.

Mr. Gildea asked whether all three of the units have 800 square feet or more. Mr. Leitner said they do not; the two downstairs units are approximately 600 square feet each, and the upstairs unit has about 1,200 square feet. Mr. Gildea asked whether they units all have proper egress. Ms. Valliere replied that all three units do have egress.

Mr. Gildea asked about the parking. Mr. Leitner said there is a driveway on the right side of the property that leads to the back of the house, and there are enough spaces to accommodate the six necessary parking spaces required under the Zoning By-Law.

Mr. Gildea asked whether Ms. Valliere currently lives in the house. Ms. Valliere replied that she lives in the house behind it, 142R Page Road, and her son and two other tenants live in the house right now.

Mr. Gordon said he wanted to have a clear picture of the history of the house, and asked for confirmation that the property was bought in 1977 and subdivided later. Ms. Valliere said that was correct. Mr. Gordon asked whether the second house, 142R Page Road, had already been built when the applicant bought the 142 Page Road house in 1977. Ms. Valliere said that the second house had not yet been built at that time; she had the house built later, after gaining a Variance and all other necessary approvals from the Town.

Mr. Gordon asked who originally determined that the house was a three-family when she bought it in 1977. Ms. Valliere said she wasn't sure, but it was most likely the bank attorney.

There was further discussion about the history of the property.

Mr. Gordon asked whether the applicant could remember any discussion at the time she bought the house about what the area was zoned for and whether a three-family home was allowed in that neighborhood. Ms. Valliere said she did not recall any such discussion.

Mr. Gordon said there must have only been two tenants living at the house when Ms. Valliere moved in, in order for there to be room for her to take over one of the units. Ms. Valliere said that was correct, but did not know how long the previous third tenant had been vacated from the premises. Mr. Gordon asked how long the existing tenants had lived there when she moved in. Ms. Valliere said it was so long ago that she can't recall, but she believes they were long-standing tenants who had been there for quite some time.

Mr. Colasante asked whether the applicant could provide a recent tax assessment. Ms. Amick also indicated that she would like to see those documents.

Ms. Valliere said she didn't have them here with her but she has several recent tax assessments in her car, which she could quickly retrieve. Mr. Gildea granted a five-minute recess to allow the applicant to get this documentation. When Ms. Valliere returned, she handed out the recent assessments to the Board members and the meeting reconvened.

Upon reconvening the meeting, Mr. Gildea said that his understanding from reading the synopsis from Christopher Laskey, the Code Enforcement Director, is that the Board has two options: the first is to ask the applicant to request a Special Permit to allow the house to be a two-family; the second is to make a finding that this house was a legal three-family dwelling prior to the Zoning By-Law change in 1945 – which finding would overturn the Building Inspector's decision of the legal occupancy and allow the house to remain a three-family. Mr. Laskey confirmed that this was correct.

Mr. Gildea then asked for the petitioners to state exactly what they are asking from the Board. Mr. Leitner said that they are requesting that the Board allow the continued use of this house as a three-family dwelling, and the Board's means of allowing that is to overturn the Code Enforcement Director's determination of the structure's occupancy.

Mr. Gildea then asked the petitioners what was their best evidence that the house was a three family dwelling prior to the change to the Zoning By-Law in 1945. Mr. Leitner again referred to the evidence presented that was from time periods after the change to the Zoning By-Law in 1945.

Mr. Gordon asked when the house was constructed. Mr. Leitner said it was built in 1925.

Mr. Gordon asked the applicant whether she lives in the house. Ms. Valliere replied that she lives in the house behind it, at 142R Page Road.

Mr. Gordon said that from his reading of the 81-83 South Road decision, the Zoning Board allowed the continued use of the three-family dwelling because the applicants were able to prove that the house was used as a three-family when the Zoning By-Law was created in 1945. He asked the applicants what evidence they can provide that shows the house at 142 Page Road was a three-family dwelling prior to that Zoning By-Law creation in 1945. Mr. Leitner replied that the best evidence is the 1951 permit showing alterations.

Mr. Gordon noted that the 81-83 South Road applicants provided a 1943 census showing that three families lived at that house. He suggested that the applicants try referencing that same census to see whether it lists three families for 142 Page Road.

Mr. Gildea opened the hearing to the public.

David Jurewicz, of 140 Page Road, said he has no problems with Ms. Valliere continuing the three-family use of the house. He said she has always been a great neighbor and has kept her property up nicely.

Elaine Stewart, of 142 Page Road, said she lives in the three-family house in question, and believes Ms. Valliere is a very fair landlord who takes care of the property.

David Wright, of 142 Page Road, said he also lives in the three-family house, on the top floor. He explained that he has lived there for two years and knows of another person who lived there for two years as well, so the property has had three tenants for at least as long as he has known it.

Christopher Laskey, the Code Enforcement Director, greeted that Board and explained that he was contacted within the last year by a real estate agent who was looking to list the house and wanted to know whether the Town considered it a legal two-family or three-family. He said he did some research on the property and also went to the house, where he noted that there were in fact three units with three electrical units and three water meters; there were two units on the first floor and one on the second floor.

Mr. Laskey stated that during the inspection, he noted an old stairway opening in a closet that lead to the second floor and appeared to have been blocked up some time in the past. He explained that he felt hesitant to call the dwelling a three-family, because the earliest documentation he could find that refers to the house as a three-family is 1971. He noted that his best guess was that it was originally built as a single-family house in 1925 and was changed to a three-family sometime between 1925 and 1971, and he had no choice, therefore, but to send Ms. Valliere to the Zoning Board for an official ruling.

The Board discussed the staircase inside the house, along with the setup and structure of the house.

Mr. Laskey said that he has been working with the Town Archivist over the past weeks to research this property and its history. He explained that the archivist was able to find a property listing which from 1945 that lists all the houses on Page Road; he said that this list does not include 142 Page Road, but it does list the original owner, Harold Kimball, under 183 Page Road, which leads him to believe that the original house number for this address was 183. Mr. Laskey stated that this listing shows that two families lived at the property, so it was likely a two-family property at the time that the Zoning By-Law went into effect.

With no more questions or comments from the public, Mr. Gildea closed the public hearing.

Mr. Gordon said that the Board will have to see some kind of documentation from 1945 proving that the house was a three-family dwelling at the time of the Zoning By-Law creation. Ms. Amick agreed, stating that there must be some tax documents or assessors records that show what the home was zoned or assessed for at that time. Mr. Gordon reiterated that the 81-83 South Road applicants used the 1943 census, so that is another option.

Ms. Amick asked Mr. Laskey what his experience as a Building Inspector would tell him about the reason for a staircase being built in the middle of the house. Mr. Laskey said that, in his opinion, the stairway was there to provide access to a second floor of a single family dwelling.

Mr. Gordon said that he appreciates hearing from Ms. Valliere's neighbors and tenants and it is heartening to hear that she is such a good landlord, but the question the Board must ask itself is not whether the petitioner is a good landlord but of what happened before 1945.

Mr. Leitner requested a continuation of the hearing to a later date to see what documentation he could find that specifies the use of the house prior to 1945.

Mr. Gordon said he thinks that it is important for the Board to state in its motion that the applicant has requested a continuation, so if there is ever a question about how long it took the Board to make its final ruling, it will be clear that the time elapsed from the date of the application submittal because the applicant needed more time.

MOTION:

Mr. Colasante moved that the Board grant the petitioner's request to continue the 142 Page Road hearing to June 30, 2010 at 7:30 PM.

Ms. Amick seconded the motion.

Voting in favor: Gildea, Colasante, Gordon, Amick, and Henning
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

BUSINESS MEETING:

Mr. Laskey said he had one item of business he wanted to discuss with the Board. He explained that Christine Rabinowitz, the homeowner for 9 Noreen Drive, approached him this week and said that she and her husband want to slightly change the location of the addition approved by a Special Permit from the Zoning Board; the addition would be scaled back and rotated, but would not push any farther into the setbacks approved by the Special Permit. Mr. Laskey stated that he considered this change minimal and insignificant, but he wanted to make sure that the Board felt the same way before he allowed the applicants to move forward with the project.

Mr. Gildea said his opinion is that since the addition will not be encroaching any farther into the allowed setback, the project is not any more detrimental and therefore does not need to be reviewed by the Zoning Board.

Ms. Amick said she recalled that the next door neighbor had some concerns about water runoff. Mr. Colasante said that was his recollection as well, so he would be concerned that this change would also change the runoff. Mr. Laskey said that there is new language in the most updated Building Code that contains runoff and stormwater requirements, so he is not concerned about the drainage issue. He noted that the Board's condition about the drainage runoff would also not be changed.

Ms. Amick asked why the applicants want to make this change. Mr. Laskey responded that he believes it is because the cost of the project was simply too high, so they are trying to scale back to meet their budget. Ms. Amick said that if the addition is in fact being scaled back, she would tend to agree with Mr. Gildea that the project is not any more non-conforming than what was already approved. Mr. Colasante also agreed, pointing out that he isn't sure what the Board would even have to say about this new project beyond noting that it isn't any more non-conforming. Mr. Gordon said that it does seem like a waste of time, effort, and money to require the applicants to come back before the Board and apply the same two requirements of a Special Permit to the smaller addition, requirements which it would obviously meet.

Mr. Laskey said that he could show the Board members the proposal before he issues the Building Permit, if it would make them more comfortable. Ms. Amick agreed that that was a good idea, so they would know what they were approving and be able to comment if they think it should come back before the ZBA. Mr. Laskey said he would make sure the Board members see the proposal before the permit is issued, and he would relay that

