

The regular meeting of the Zoning Board of Appeals of the Town of LaFayette was held June 12, 2007 at 7:30 PM in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of Lafayette

Members Present: Steve Beggs Chairperson
 Bob Drumm Member
 Dan Kuhns Member

Absent: Jerry Doolittle Member

Recording Secretary Mary Jo Kelly

Others present: Wendy Reese, ZBA Attorney
 Tom Maines, Applicant
 Attorney for Tom Maines

Chairman Beggs called the meeting to order at 7:42 p.m. He welcomed everyone and had everyone introduce themselves.

Chairman Beggs asked if there were any additions or corrections to the May 8, 2007 minutes. There were none.

Member's Kuhns moved and Drumm seconded the motion to accept the May 8, 2007 Zoning Board of Appeals Meeting Minutes as submitted by the Secretary. Motion passed unanimously.

Chairman Beggs said the one case before the Board tonight is the appeal of Tom Maines for a structure on Route 11 North that currently has a specific permit for a 2-family dwelling. They applied for this under Case No. 298 in 1981 and he wants to get approval for a 3-family dwelling.

Tom Maines' attorney said the Maines family has been in LaFayette now for generations. This home is facing Route 81. There is no other home in front of it. The closest structure to it is a commercial structure. There is no other residential property within view of this property. Mr. Maines has inherited this home from his family. The structure has been used as rental property and there is a situation where there is a one bedroom efficiency that was utilized by Mr. Maines who is no longer in New York State. They are hopeful to have the efficiency become a rental property. There is over 10 acres of land that are part of this. The home will not be changed in its exterior dimensions. There will be an internal change only.

Chairman Beggs said in April of 1981 there was a Specific Permit granted to Howard Maines for a two apartment complex. He asked if Howard Maines was Tom's father.

Tom said yes.

Chairman Beggs said he sat on the Board at that time so he is familiar with the proceedings that went on. He asked if the applicant had a copy of the resolution.

Tom's attorney said when the father left the area, he deeded the land to his son and there was no other paperwork that followed the transfer.

Chairman Beggs said he tried to find a copy of the old resolution. So far he hasn't found one. He asked if our legal counsel could research this with Bond Schoeneck &

King who were the attorneys at that time. He confirmed when the applicant's father lived there it had two rental units.

Tom said yes.

Chairman Beggs said the applicant will need County Health Dept. approval of the septic system because it's being classified as a 3-apartment dwelling. This Board would like to see a floorplan of the 3 apartment complex.

Tom said he can do this.

Chairman Beggs said the Board would require a parking plan as there would be 3 separate units inhabiting the property.

Tom said he can provide that.

Tom's attorney said the only area being changed would be the ground floor apartment. The second floor isn't being changed from when it was approved.

Chairman Beggs asked if utilities would be included in the rent.

Tom said yes.

Chairman Beggs confirmed there would be no need for separate meters then.

Tom's attorney said this will just be a one bedroom efficiency apartment.

Chairman Beggs said this structure existed prior to zoning so it grandfathered in.

Member Kuhns said the Minutes talk about a two-family unit. Does the fact that the owner lived in one of the apartments make that apartment not considered a family unit? He can't get that from the Minutes.

Tom's attorney said the Board approved Mr. Maines living there and being able to rent out two units. This should have been listed as a 3 unit dwelling originally.

Member Drumm said regarding the grandfather clause, it doesn't apply after a certain period of time goes by or the use changes.

Tom's attorney said he and counsel will have to discuss this. It's the same as before. The wording of the decision might have caused difficulty.

Member Kuhns said having not been involved, the question comes up was this authorized as a two-family dwelling and was it legally divided up for the third usage.

Tom's attorney said the number of dwellings within the structure hasn't changed. It's the same configuration that was put before the Board last time.

Chairman Beggs does remember that Howard Maines did reside there. He thinks there were two apartments. He asked the applicant if he can find a copy of the resolution.

Tom doesn't believe so.

Tom's attorney said the applicant's father left New York State 4 years ago. The efficiency unit was inhabited by Howard's son Tim who left for another state within the last month.

Wendy Reese said at this point hopefully we can find the resolution, if not, what we have here is a recollection of approval of the 2 units. Without some sort of proof that the 3 units were approved, the Board would need to grant Specific Permit expanding on a non-conforming use.

Tom's attorney said they could supply affidavits.

Wendy said if the applicant wants to try to provide the proof, they can go this route to avoid the Specific Permit route.

Member Kuhns questioned expanding a non-conforming use.

Wendy said you can expand a non-conforming use as long as you don't go outside the exterior structure. As long as you are expanding within the structure, you are O.K.

Member Drumm asked if this would include the septic.

Wendy Reese would think the septic would be a separate issue. It is not considered part of the structure.

Chairman Beggs said the problem this Board faces is the expansion of a non-conforming use.

Member Kuhns thought the intent of non-conforming uses is that they will go away and not be expanded upon.

Tom's attorney said that is why it's so important to find the decision on this to assure everything was approved that exists now. They will also document to the Board that with Tim and Howard Maines leaving the area, Tom is the only one left to maintain the property. It becomes somewhat economically burdensome if you don't reside there so this additional efficiency would make it more economical.

Chairman Beggs asked counsel to pursue this case and try to find documentation. He asked the applicant to provide the documentation the Board requires. This will be scheduled for a public hearing next month. A survey will be required showing structures and well and septic locations along with a parking plan. It would be helpful to have floor plans for the structure.

This will be referred to County Planning for their review as it's on a state road.

Wendy Reese noted the town requires 2 parking spaces for each unit. The applicant should have something in writing from the DOT stating increasing from 2 units to 3 units won't have a negative impact on the traffic. She noted in reviewing the Minutes, it appears it was only a 2 family dwelling. According to the Minutes it was approved for a two family unit which is why it states 4 cars. Just looking at the Minutes it states 2 family house. She doesn't know how they ended up with 3 units or if those were there originally. She doesn't think the Resolution will clear this up as only 4 parking spaces were required which means 2-family. The applicant advised they can give rent receipts from all the way back which she doesn't think they will be able to do which is why he will have to go the Specific Permit route.

**Member's Drumm moved and Knapp seconded the motion to adjourn.
Motion passed unanimously.**

The Zoning Board of Appeals Meeting adjourned at 8:32 p.m.

Respectfully submitted,

Mary Jo Kelly
Secretary