

Minutes of the July 8, 2008 Zoning Board of Appeals Meeting Minutes held in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette at 7:30 p.m.

Present: Stephen Beggs, Chairman
Robert Drumm, Member
Christine Keenan, Member
Jim Butkus, Alt. Member

Absent: Daniel Kuhns, Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney
Jerry Doolittle, Member (Recused)

Chairman Beggs called the meeting to order at 7:40 p.m. Everyone introduced themselves. He advised Jerry Doolittle stepped off the Board due to a conflict of interest.

CASE 601 - Sketch Plan Conference by Dianne Torrey for a use variance for property located at 1741 Route 11 approximately 1 mile south of the North Road and Route 11 intersection in an Agricultural/Residential District. (Tax Map No. 012.-01-10.1).

Chairman Beggs said this is a Sketch Plan Conference for Dianne Torrey who wants to get a multiple use permit for a house that is in an Agricultural/Residential District. He asked John Langey to outline what is required for a use permit.

John Langey said the Use Variance in New York State has a long and tortured history as far as applicants go. Our town is broken into numerous use districts. This application is in an Agricultural/Residential District which allows single family homes. The applicant has to apply for a Use Variance for a multiple family home. The applicant must prove that the applicant will not receive a reasonable return under the current zoning. You would have to get an appraiser to say there is no way this house can be sold as a single family home. The second legal standard the applicant has the burden to prove is the self-created hardship rule. If you find there is a self-created hardship, the state requires the Board to deny the application under the state law. There are some other criteria that are easier to meet. The financial burden and self-created hardship proof are the hardest to prove.

Chairman Beggs noted there are some existing situations in the town like this where the structure was a multiple family dwelling in an Agricultural/Residential District at the time zoning was drafted. If this happens, we don't force them out of business. If something was in existence prior to the 1970 Zoning Ordinance, it would be grandfathered in.

John Langey said legal non-conforming uses do grandfather in. The town doesn't encourage them to exist but they are certainly allowed to exist until they cease.

Chairman Beggs asked when this was established as a 2-family dwelling.

Diane Torrey said in 1984-85.

Chairman Beggs said he did some research in the Town Offices and he couldn't find where any permits where approval was given for this to be a multiple family dwelling.

Dianne Torrey said it was done by her parents and she bought the home from them not realizing there was a problem as next door there is a dwelling with multiple apartments in it.

Chairman Beggs said there are situations in the town where you are allowed an in-law apartment. These are allowed in unique instances and with the proper documentation. Based on what he read in the application, he surmised this became a multiple dwelling in the mid 1980's but he also looked to see if it was ever a special permitted use at that point in time.

Dianne Torrey said no. The house was separated into two apartments as her parents were going through a divorce. Four years later she bought the house and lived there until 1991. Her mom lived in one apartment and she lived in the other. She got married and moved out and started to rent out her apartment. Her mom moved out a year ago so she has started to rent that one out too. They would like to sell this property now. When they went to list it, Jerry Doolittle noted there was a problem and it couldn't be listed as a multiple family dwelling.

Chairman Beggs asked if anyone on the Board had any questions or comments.

Alt. Member Butkus said our existing zoning under Section D – Residential Multi-Family District reads "...Two-family dwellings and structures and uses permitted in Agricultural-Residential (AR) Districts shall meet the minimum area, width and yard requirements for lots in Residential Planned Cluster (RPC) Districts..."

John Langey doesn't believe this provides any relief.

Alt. Member Butkus asked if the building is occupied now.

Dianne Torrey said one apartment is rented.

Member Drumm asked who lives there.

Dianne Torrey said it was her mother and a sister or two in one apartment and she lived in the other one.

Member Drumm asked if there were two separate electrical services.

Dianne Torrey said yes.

Member Drumm asked if she would be a resident.

Dianne Torrey said no. The building is inaccessible to them as their daughter is in a wheelchair.

Member Drumm asked if it's being used as a two-family dwelling now.

Dianne Torrey said right now one apartment is rented. The other apartment was empty as of the end of February. From October 2007 to February 2008 both apartments were occupied.

Chairman Beggs said the property is up for sale and there is a challenge of how to list it. Should it be listed as a single-family dwelling or a multiple-family dwelling? He wished he had some good news for the applicant. It won't be an easy road for her to prove the items John Langey mentioned. Based on what he saw in the documentation, he doesn't think it grandfathered in. Do we make it a two-family dwelling or does it revert back to a single-family dwelling?

Member Drumm asked if she is the owner.

Dianne Torrey said yes.

Member Drumm asked if she is the only owner.

Dianne Torrey said yes. When she bought it, she wasn't married.

Member Drumm asked when she bought the house if she got an income from rent.

Dianne Torrey said no. Her mom lived in the back and she and her mother split the bills.

Chairman Beggs said that is kind of the setup we have for an in-law apartment. Those properties cannot be rented. There are cases where the parents or grandparents can't live independently or all alone which is where we molded the Zoning Ordinance to allow in-law apartments. This would not be a rent producer but a co-existing structure. If this could be set up that way, it might work.

Member Drumm asked if they want to sell it as a two-family house.

Dianne Torrey thinks that is what would give it the most value.

Jerry Doolittle said if she is not currently living in it, could she get it listed as an in-law apartment so she could sell it do someone as a residence with an in-law apartment?

John Langey said no. The ordinance reads you lose the approval if you sell the property. As a marketing tool he thinks you would be in your rights to describe the Zoning Ordinance to a potential owner that he could apply and if he met the criteria could have an in-law apartment. The applicant could look at the law as a marketing tool. He doesn't think they can advertise it as already having the in-law status. They could come to the Zoning Board of Appeals to have it granted. The criteria is not that difficult to meet. He reviewed the criteria for an in-law apartment. The family accessory unit is a very viable option for the applicant.

Member Drumm asked if this is a two-story house.

Dianne Torrey said yes.

Alt. Member Butkus noted the in-law apartment status must be renewed every 5 years.

John Langey said yes. The Code Enforcement Officer can do this. It's just to be sure nothing has changed.

Chairman Beggs asked if what the Board has outlined has helped clarify matters for the applicant.

Dianne Torrey thinks they will have to go with the in-law possibility.

Member Drumm said he doesn't have anything against this other than setting a precedent. Soon you could have several multiple-family dwellings and sell them as that.

Chairman Beggs said that is why the in-law apartment approval is only good for the property owner. A new owner would have to go before the Board for approval. Just because you purchase the property, it doesn't grandfather in the in-law apartment.

Alt. Member Butkus noted in the ordinance the in-law apartment and main dwelling must share the utility meter.

Chairman Beggs asked if there were any other questions or comments.

Member Drumm said the only thing he would say is to sell it under the condition that it could be used for an in-law apartment and see which way it goes.

Chairman Beggs thinks with Jerry Doolittle's background, he can guide the applicant through the ordinance. The approval for an in-law apartment could be a condition of the sale by the buyer.

Member Drumm asked how close they are to their nearest neighbor.

Alt. Member Butkus said 230'.

Jerry Doolittle said and the closest neighbor is a multiple-family dwelling.

There were no further questions or comments.

Chairman Beggs said at this point in time he will close the review of this case until the applicant can decide what she wants to do. His best recommendation from a financial aspect is to look at the potential sale of an in-law apartment structure.

Member Drumm asked if they sell it as a one-family dwelling, would they take a loss on it?

Dianne Torrey said absolutely as they would have to take out one kitchen, etc. to revert it back. You would be throwing out the better kitchen as it is in the center of the house.

Member's Drumm moved and Keenan seconded the motion to approve the February 12, 2008 Zoning Board of Appeals Meeting Minutes as submitted by the Secretary. Motion passed.

Member's Drumm moved and Keenan seconded the motion to adjourn. Motion passed.

The Zoning Board of Appeals Meeting adjourned at 8:26 p.m.

Respectfully submitted,

Mary Jo Kelly
Secretary