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## BOARD OF APPEAL

KATHARINE E. TOY  
 Administrative Secretary  
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Petition of David Owen Landers

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:10 p.m. on July 24, 1975, on the petition of David Owen Landers, requesting permission to use the dwelling owned by him at 161 Oakland Street as a two-family dwelling as provided under Section II. 8 (a) of the Zoning By-law.

On June 9, 1975, the petitioner filed his request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

At the hearing, Geoffrey Domenico, attorney, introduced the petitioner who explained in detail his present situation and his need for the desired permit.

Santo P. Pasqualucci, 7 Redwing Road, spoke in favor of the request.

The following persons spoke in opposition to the request: Edward Smith, 150 Oakland Street, Irving Smith, 142 Oakland Street, Charles Detwiler, 151 Oakland Street, Theodore Kapala, 132 Oakland Street, Georgiana Kinlin, 144 Oakland Street, George E. March, 167 Oakland Street, Frank Montague, 152 Oakland Street, Katherine Jack, 178 Oakland Street, Byron Johnson, 72 Standish Road and Robert Butter, 170 Oakland Street, as well as William Frederickson, 37 Jackson Road and Doris Seeley, 53 Madison Road.

They all stated that, in their opinion, the continued use of the house as a two-family dwelling or any use other than a single-family dwelling, would be detrimental to their properties. The neighborhood is zoned as a Single Residence District and is developed with well-kept single-family dwellings, and it is their desire to keep it that way. Since the petitioner purchased the property, it has been unsightly and a constant problem to the neighborhood. It was alleged that there have been a number of unrelated persons occupying the house, sometimes as many as fifteen, as well as trucks, vans, motorcycles and at times as many as twenty cars parked on the premises. They all felt that the house is no larger than the others in the neighborhood and not excessively large to be returned to a single-family dwelling.

A letter was received from M. L. Clemence, 2 Jackson Road, in which he urged the Board to deny the petition.

The Planning Board opposed the granting of the request in its report.

Statement of Facts

The house involved is a three-story wooden building, built approximately seventy-five years ago, containing four rooms and bath on the first floor, six rooms and bath on the second floor, as well as a basement and an attic. Until it was sold to the petitioner five years ago, it was owned by the Academy of the Assumption, an educational institution located on Oakland Street, and while owned by the Academy was for many years used to house some of the Academy employees. The property is located in a Single Residence District and contains 34,350 square feet.

The petitioner seeks permission to use the house involved as a two-family dwelling which he alleged had been its use for some time prior to his purchasing the property. He felt that the desired use would be an improvement to the neighborhood over the conditions which existed during the past two or three years. The income derived from the proposed use will enable him to meet his mortgage and maintain his home; otherwise, he will be forced to sell the property. He pointed out that the house presently has two apartments, one on the first floor and one on the second floor, and was laid out as such when he purchased it. In his opinion, the two cooking areas have been there since 1938 when the Academy owned it. He stated that he did have some problems with some of his tenants at one time, but he now has his mother occupying one of the apartments and, in his opinion, its continued use as a two-family dwelling will not prove detrimental to the neighborhood.

At the close of the hearing the petitioner requested permission to withdraw without prejudice, as he desired further time to discuss the issues at hand with his neighbors. He would then present another petition as soon as such discussions have occurred.

Decision

After full and complete hearing on the petition as presented, the Board denies the petitioner's request to withdraw his petition.

After giving careful consideration to all the evidence submitted and making a careful study of the records of the Town relative to the dwelling involved, it finds that reasons do not exist for granting the relief sought by this petition.

The premises involved are located in a Single Residence District, and from a view of the locus, it appears that the dwellings in the area are occupied as single residences, or if otherwise occupied, without official permission. All the neighbors at the hearing expressed their opinions that the granting of the petitioner's request would reduce the value of properties within the district, and be injurious to the neighborhood. No evidence was introduced on behalf of the petitioner which could be regarded as sufficient to contradict these expressions of opinions.

From the records in the Building Department, it appears that complaints have been registered against the owner's illegal use of the property for several years, and the property as used has been a source of annoyance to the neighborhood.

The allegations indicated that the house had been occupied by a number of unrelated persons, with trucks, trailers, motorcycles, campers as well as a number of cars parked on the premises most of the time. On at least two occasions the Building Inspector notified the petitioner to remove the illegal vehicles from the premises and to cease the illegal use of the premises. On two occasions applications were filed by the officer of the Building Department in the District Court for a criminal complaint against the petitioner for the above-mentioned violations.

Following the last complaint, the petitioner petitioned this Board for the requested permission.

It seems clear to this Board that the alleged violations of the Zoning By-law, in this case, are valid, and sufficient reasons do not exist for the granting of the request. The Board is required in all cases brought

under Section II, 8 of the Zoning By-law, to make certain findings to the effect, "that the proposed use will not substantially reduce the value of any property within the district, and will not otherwise be injurious, obnoxious or offensive to the neighborhood." On the evidence submitted, the Board cannot make such findings.

The Board finds that the petitioner knew when he purchased the property involved that it was located in a Single Residence District and did not pursue the indicia of the legality of its non-conforming use sufficiently to rely upon it as being a legal two-family dwelling. In the Board's opinion, the house is not excessively large to be used as a one-family dwelling and from the evidence submitted, it is clear that while being used as a non-conforming dwelling, it was a constant aggravation to the neighbors. Therefore, it is the judgment of the Board, that the proposed use of the dwelling as a two-family house would reduce the value of properties in the district and is injurious, obnoxious and offensive to the neighborhood.

Accordingly, the request is denied and the petition dismissed.

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Filed with Town Clerk \_\_\_\_\_

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