TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208
web: www.wellesleyma.gov

ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA
2013 MAR 21 P 4:

ZBA 2013-11
Appeal of David Landers
161 Oakland Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 7, 2013 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the appeal of DAVID LANDERS, pursuant to the provisions of Section XVII and Section XXIV of the Zoning Bylaw and Chapter 40A, MGL, of the determination of the Inspector of Buildings that the current use of the property at 161 OAKLAND STREET, in a 30,000 square foot Single Residence District, is as an existing nonconforming two-family dwelling.

On February 19, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing David Landers, (the "Petitioner").

Mr. Landers said that the request is for the Board to recognize his house as a three family use rather than a two family use. He said that he would like to refinance the property and make some improvements. He said that he had some problems with the appraiser when she saw what she thought was an illegal third unit.

Mr. Landers said that the Building Inspector is of the opinion that the apartment was added without authorization after 1975.

Mr. Landers said that he believed that he could demonstrate that the building had three apartments for many years before he bought it in 1968 and possibly before 1925, when the Zoning Bylaws took effect.

Mr. Landers said that the house looks like a single family because it is not a three decker. He said that it has only one entrance in the front. He said that it is an up and down two family with a third unit in the basement.

Mr. Landers said that the permits that have been pulled on the building do not show it to be a three family.

The Board said that this property is located in a single family district. The Board said that under the State Statute and the Zoning Bylaw, any uses or structures which pre-date the enactment of Zoning are grandfathered and are allowed to continue, provided that it has not been abandoned at any time. The Board said that, in order to get the relief that Mr. Landers is asking for, he would have to satisfy the Board that from 1925 to the present time the property has been used as a three family.

Mr. Landers said that when he bought the house in 1968 there was a kitchen and bath on the second floor. He said that the bathroom had a toilet, sink and bath tub. He said that the unit on the first floor had a kitchen, bathroom and living room. He said that the bathroom had a toilet, sink and bath tub. He said that in the basement there was a kitchen and bathroom. He said that the bathroom had a toilet, sink and shower. He said that all three units had two independent means of egress. He said that he believes that the two family with a third unit in the basement existed prior to the Zoning Bylaws, and therefore should be grandfathered. He said that he did not change anything.

The Board asked when the structure at the rear of the house was constructed. The Board said that it appears that some of the elements of the addition have been upgraded in the past ten or fifteen years.

Mr. Landers said when he bought the house it had fairly small first and second floor units at approximately 1,000 square feet each. He said that the unit in the basement was less than 500 square feet.

Mr. Landers said that he provided lists of residents. The Board said that a list of residents that is based on surnames is not in any way conclusive that they lived in separate units.

Mr. Landers read from a Residents List from 1962. He said that it clearly shows that Peter Boudreau and his wife were one family unit. He said that there was Ethel and Ida Jansson as another family unit and William and Evelyn Loar as a family unit. He said that they were three separate families.

The Board asked what assurance there was that they were three separate families in three separate dwelling units. The Board said that there was no prohibition on more than one surname living there. Mr. Landers said that it is reasonable to assume that they did not all live in the same unit or that they only lived in two of the units. He said that this was a farmhouse that was part of a working farm. He said that the Sisters of Charity managed the farmhouse to provide residence for the farmers, their children and farm hands.

Mr. Landers said that records back to 1935 show that the building was consistently occupied with a minimum of two families plus other workers. He said that it was hard for him to believe that they were not using all three units.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 21 P 3:41

The Board said that Mr. Landers needs to show that the house existed as a three family in 1925.

Mr. Landers said that the 1962 Residents List showed only six people. He said that the lists do not include children under 20 years old. He said that when he bought the house, a resident had two children. He said that there were at least ten people living in the house when he bought it.

Mr. Landers said that in 1935 there were 16 people, only two of whom were related, living in the farmhouse. The Board said that it could have been used as a rooming house.

Mr. Landers said that a farmhouse can be a dwelling that is used to provide residence for farmers and farm hands. He said that there can be more than two farming families and more than one farm hand all living in the same house. The Board said that it could still be only one dwelling unit. The Board said that the issue is not the number of people living there.

The Board asked about the age of the fixtures. Mr. Landers said that there are old cast iron waste pipes behind the walls. He said that there was a Building Permit pulled in 1938 to replace three water closets, three wash bowls, and two bathrooms and a shower. He said that is what was there when he bought the house. He said that the 1938 Building Permit was to replace old plumbing. He said that the plumbing must have existed prior to 1925. He said that it did not make sense to replace 13 year old plumbing.

The Board said that the 1938 Building Permit was for bathrooms. The Board said that currently single units could have multiple bathrooms. Mr. Landers said that he grew up in Wellesley in the Hills area, which consisted of single family upscale housing. He said that he did not remember any of his friends' houses having more than two bathrooms. He said that in the 1940's and 1950's, a typical single family house had one bathroom, which was usually located on the second floor where the bedrooms were.

Mr. Landers said that it is hard to believe that a triple decker, a three family or an up and down two family would have two bathrooms in one of the units.

The Board said that permits have granted for this property over the years that list it as a two family. The Board said that it is the information on a Building Permit that establishes and confirms the use of a building. The Board said that for over 60 years there have been many opportunities to establish that it was something different. The Board said that Mr. Landers is attempting to do that now but there is nothing to indicate there was a legal effort to put in a third unit there.

Mr. Landers said that after he bought the house there was a problem establishing that it was a two family dwelling. He said that he spoke with Ed Phaneuf, the Building Inspector at the time, and the Building Inspector was of the opinion that it was a single family. He said that Mr. Phaneuf went through the files and found a permit with a number two written on it. The Board said that Mr. Phaneuf had a record that defended Mr. Landers' position that it was a two family dwelling. The Board said that now Mr. Landers is saying that it is a three family. Mr. Landers said that he did say that it was a two family on a lot of the permits. He said that he should have made it an issue in the very beginning. He said that on one of the permits after he decided that it was not a two family, he left the number blank.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 21 P 3:35

Mr. Landers said that in 1938 there were 16 unrelated people living in the building. The Board said that that it was not surprising that there could be 16 unrelated persons living in a farmhouse.

The Board asked why Mr. Landers came before the Board in 1975 to legalize the two family use. Mr. Landers said that the petition was denied by the Zoning Board. He said that when the permit that was pulled showing it to be a two family was discovered by the Building Inspector, the house regained status as a two family.

The Board said that it is not challenging Mr. Landers' right to use the house as a two family. The Board said that the burden is on the Applicant to show evidence or documentation, other than multiple surnames living on this property over the years, that it was a legal three family or that it was a three family prior to 1925.

Mr. Landers said that the Sisters of Charity bought the farm and the farmhouse in the 1890's. He said that he believed that they bought it with all three units intact.

Michael Grant, Building Inspector, said that he did not feel it was necessary for him to enter the property because he had the letter from Ed Phaneuf, who entered the property and viewed it as a two family. He said that, even though in 1975 the Board revoked that use, he said that he determined that the house had pre-existing status from 1938. He said that he is willing to accept the two family status. He said that, in 1938 on the long form, it clearly showed that it was a two family and would be occupied as such.

Mr. Grant said that in the 1975 decision on page 2, Mr. Landers pointed out at the hearing that the house presently had two apartments, one on the first floor and one on the second floor and was laid out as such when Mr. Landers purchased it. He read Mr. Landers' statement in the decision that, "in his opinion, the two cooking areas have been there since 1938 when the Academy owned it."

Mr. Grant said that in 1978 a permit was pulled that just said, "private residence". He said that another permit was pulled in 1987 on which Mr. Landers clearly wrote that it was a two family. He said that in 1997 a permit was pulled for a two story addition. He said that Mr. Landers wrote in the description that it was a two family.

Mr. Grant said that on the permit application in 1997, the description said that the foundation was in place "– two story addition to be added to existing foundation – basement workshop – 1st floor sitting room – 2nd floor sitting room with sunroom – 15 x 24'10"." He said that it was listed as a two family.

Mr. Grant said that the application in June, 2000 was for completing existing unfinished addition family room. He said that it was listed as a two family.

Mr. Grant said that in 2001 the application was for, " addition of two family room – one on first floor apartment, one on second floor apartment – flat roof – complete the addition." He said that it was listed as a two family. He said that the permit was signed off, which means that the Building Inspector was confirming that it was still a two family.

Mr. Grant said that he could not find any evidence going back to 1925 that this is a legal three family. He said that there may be records to that effect but that may just prove that there is an illegal situation going on. He said that it lends more credence to a violation. He said that after putting together all of the evidence that he could collect, it appeared that a third unit was added after 1975 because Mr. Landers testified before the Board that it had two apartments. The Board said that the apartment may have been there but was not mentioned.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 1 P 3:35

Mr. Grant said that the Academy of the Assumption was a huge piece of property. He said that the residents list from 1938 does not say that 16 people were living in the house. He said that the list indicates that there were 16 people living on the Academy of the Assumption property.

Mr. Grant said that it could be concluded that there were three units but the evidence contradicts what the Residents Records are saying. He said that he did not find any compelling evidence to show that this was a three family use.

The Board confirmed that Mr. Landers lives at the house on the second floor. Mr. Landers said that there are two Babson Graduate students living on the first floor and a
Professor of Linguistics at Wellesley College in the basement. He said that he can rent the first floor and basement as a single unit. He said that they are tenants at will.

Mr. Landers said that he agreed that it was a two family as a matter of expedience. He said that at the time he was worried that he would lose his two family status. He said that to push for a three family seemed to be a little too much. He said that when he bought the property, the physical evidence was that it was a three family.

The Board said that nothing was submitted to help the Board come to the conclusion that, at the time the property was zoned, it already existed as a three family.

Mr. Landers said that the building has three separate units with old plumbing. The Board said that a waste pipe only shows that there was some plumbing in that location.

Mr. Landers said that he is just trying to be a good neighbor by improving the property.

The Board asked Mr. Grant if there is an Enforcement Order. Mr. Grant said that there is. He said that the time limit was 30 days but the Appeal was filed. The Board said that it would like to give Mr. Landers time to make the necessary alterations to put it back to a two family. Mr. Grant said that the 30 days could be from the time the decision was recorded.

Mr. Landers confirmed that appealing the decision in court would stay the time limit.

Mr. Grant discussed State regulations for removing permanent cooking facilities.

There was no one present at the Public Hearing who wished to speak to the petition.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 21 P 3: 35

Statement of Facts

The subject property is located at 161 Oakland Street, in a 30,000 square foot Single Residence District.

The Petitioner is appealing the determination of the Inspector of Buildings that the current use of the property is as an existing nonconforming two-family dwelling.

Submittals from the Inspector of Buildings

- Letter to David Landers, dated 12/3/12, from Michael Grant, Inspector of Buildings/Zoning Enforcement Officer
- Letter to Robert Bashian, et al, dated 12/15/98, from Edgar A. Phaneuf, Jr., Inspector of Buildings
- Letter to Michael T. Grant, dated 12/21/12, from David Landers
- Certified Letter to David Landers, dated 1/7/13, from Michael Grant, Inspector of Buildings/Zoning Enforcement Officer
- Letter to Michael T. Grant, dated 1/10/13, from David Landers
- Form B – Building, Massachusetts Historical Commission, dated 1/28/83
- Building Permit, 6454, dated 8/26/38
- 1935 List of Residents, Precinct Five, Page 131
- 1940 List of Residents, Precinct Five
- 1948 List of Residents, Precinct Five

- 1952 List of Residents, Precinct E
- 1955 List of Residents, Precinct E
- 1957 List of Residents, Precinct E
- 1962 List of Residents, Precinct E
- ZBA Decision 75-26, Petition of David Owen Landers
- Parcel Detail Information, 1/4/13
- Building Permit Application, dated 10/28/29
- Building Permit Application, dated 8/26/38
- Building Permit Application, dated 6/16/78
- Building Permit Application, dated 11/23/87
- Building Permit Application, dated 8/14/97
- Building Permit Application, dated 6/2/00
- Building Permit Application, dated 11/14/01

Submittals from the Appellant

- Letter to Zoning Board of Appeals, dated 1/24/13, from David Landers
- Letter to Michael T. Grant, Building/Zoning Enforcement Officer, dated 1/10/13, from David Landers
- Timeline
- Form B – Building, Massachusetts Historical Commission, dated 1/28/83
- Building Permit 6454, dated 8/26/38
- 1935 List of Residents, Precinct Five, Page 131
- 1940 List of Residents, Precinct Five
- 1948 List of Residents, Precinct Five
- 1952 List of Residents, Precinct E
- 1955 List of Residents, Precinct E
- 1957 List of Residents, Precinct E
- 1962 List of Residents, Precinct E

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 21 P 3: 35

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The Appeal of the determination of the Inspector of Buildings that the current use of the property is as an existing nonconforming two-family dwelling is denied and the decision of the Inspector of Buildings is upheld.

ZBA 2013-11
Petition of David Landers
161 Oakland Street

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2013 MAR 21 P 3:35

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

J. Randolph Becker, Acting Chairman

Robert W. Levy

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm