

WICKLIFFE BOARD OF ZONING APPEALS
February 26, 2009

Chairman Bennett called the meeting to order at 7:30 P.M.

ROLL CALL: Present: Bennett, Guhde, Levar,
Excused: Bello & Nicholas

Chairman Bennett stated the minutes from January 22, 2009 had to be approved. He asked if there were any additions or corrections. There being none he made a motion to approve the minutes. Mr. Guhde seconded the motion

AYES: Bennett, Guhde, Levar

NAYS: None

MOTION CARRIED

Chairman Bennett said the case before the Board tonight is CASE NO. 2009-102 as follows:

Section 1309.41 states in part that only one (1) dwelling unit is permitted in a R1-50 Single Family Residential lot. Vic Salotto made application on 1/26/09 to appeal the Building Commissioner's decision to abate property located at 1455 East 294 Street, whereas Mr. Salotto converted an existing garage at that location into living space and rented it out as a single family living unit. A violation notice was issued to Mr. Salotto dated 1/5/2009 stating to cease and desist any living quarters at 1455 East 294 Street. Mr. Salotto had issued an address of 1457 East 294 Street on that property.

Chairman Bennett asked is there were any questions of the Building Commissioner. Mr. Guhde asked how long has this building been in existence at that location. Mr. Sack said the garage has been there for years but he did not know when this conversion took place. Mr. Guhde then said that it is an unknown how long it has been a living quarters. Mr. Sack said yes. Chairman Bennett asked for a clarification on the addresses. The garage was given the address of 1457. That is in the center of the two existing houses.

Facing the garage, there is one on the right and one on the left. Is the house on the right or left the property we are talking about? Mr. Sack said the house on the left. That house is 1455. The house on the right is 1459 and that is not involved.

Mr. Levar asked how he found this piece of property. The address is posted on the structure but the Post Office sent a letter stating that there is no such address. This was sometime in January. Mr. Levar then asked Mr. Sack if there had been any building permits taken out and Mr. Sack said no, there were no occupancy permit or building permits taken out or inspections for this location. Mr. Levar then asked if there was a sewer in there. Mr. Sack said he assumes there is a sanitary because there has to be a bathroom in there. He has no further information because he hasn't been in there.

Chairman Bennett asked if there were any additional questions. There were none. He then asked the applicant to address the Board. Mr. Paul Hentemann, said he was representing attorney and began to question Mr. Salotto, building owner. At that point, Chairman Bennett indicated that Mr. Salotto would have to be sworn in and Mr. Stempuzis swore in Vic Salotto.

Mr. Salotto said the garage was there and about 12 years ago put doors on front and back. Then he decided to fix it up. It already had water, gas, bathroom, everything was there. The only thing he did was insulate and drywall and put tile on the floor and then rented it. Chairman Bennett said it has been rented for 13 years. Mr. Salotto said no, just about 3-4 months ago. He said he knew had should get a permit and he will do that and he's sorry for that. Mr. Hentemann asked how many people live there. Mr. Salotto said one girl. Mr. Hentemann asked her age. Mr. Salotto said she is a retired teacher and she is disabled. Mr. Hentemann asked how many bedrooms. Mr. Salotto said one bedroom upstairs and a kitchen and living room down. Mr. Hentemann asked why he didn't get a permit. Mr. Salotto said it's a long story. He made reference to a neighbor and than said "that's what it is, sorry." Mr. Hentemann asked why he put an address on it. Mr. Salotto said "there's 55 and 59 so he made 57." Mr. Hentemann asked how much he invested in the property. Mr. Salotto said \$7,000. Mr. Hentemann asked is there was any problem if Mr. Sack came and took a look at it. Mr. Salotto said okay and let him know. Mr. Hentemann then said you can only have one family on the lot. Mr. Salotto said it's commercial. Mr. Sack said it is residential. Mr. Salotto said 400' from Euclid Avenue, as far as he knows it's commercial. Mr. Sack said he could show on a zoning map that it is commercial. The map was viewed.

Mr. Levar asked if there was a sewer and a toilet facility. Mr. Salotto said everything is there. Mr. Levar said everything is done except you never got a permit. Mr. Salotto everything is in and if you go in it looks like a palace. Mr. Levar added additional comments and said we have to have permits and follow the code. Mr. Hentemann said he wondered if things could be done retroactively and asked Mr. Sack if this comes within that exception on the commercial. Mr. Sack said it is zoned residential, Town Center District. Mr. Salotto questioned Rockefeller area and said it was all commercial all the way across. Chairman Bennett said it is new zoning that came in since you had your building on Rockefeller and this garage.

Mr. Hentemann said he knows what his client did is improper. The next question would be to look at it from another point of view. What he has done hasn't harmed the neighborhood in any way. Listening to the conversations, if anything he benefited the neighborhood. He asked the Board to consider that. Mr. Hentemann asked when he did all this work and how long he worked on it. Mr. Salotto said about four or five months ago, all winter.

Mr. Levar asked the Building Commissioner if, in fact by some miracle this all works out, would it still be proper to have two residents on a single family lot in this city. Mr. Sack said no, that is the problem.

Mr. Sack said if the lot was big enough where I could do a lot split, but it is not big enough. You need 50' frontage per lot. Chairman Bennett said we haven't even looked at the code regarding square footage. What Mr. Sack did was a cease and desist because there are a lot of violations that happened along the way that he did not cite, like occupancy permit. Without looking at the building requirements, if it were a 100' lot, it still may not have the square footage that is needed.

Mr. Hentemann asked if the lady was there on a lease or on a month -to-month. Mr. Salotto said on a one year lease. Mr. Hentemann questioned her disability and asked if she can move around. Mr. Salotto said she can move around but can't stand too much or she'll fall down.

Chairman Bennett opened up the meeting for audience participation. Anyone wishing to address the Board would be sworn in at this time. There was no one and audience participation was closed. He then asked if there was any further discussion. Mr. Guhde said it appeared to be pretty clear and we can't allow people to have two buildings on the same property. Chairman Bennett said he sure it is an improvement to the neighborhood but it would be quite a precedent that would be set for the city. Mr. Levar expressed that it's unfortunate it is something that cannot be permitted. Chairman Bennett added also that we don't know other codes that are not adhered to.

Chairman Bennett said we need a motion to uphold the decision of the Building Commissioner or to overrule it.

Mr. Guhde made a motion of uphold the decision of the Building Commissioner. Chairman Bennett seconded the motion.

ROLL CALL: AYES: Bennett, Guhde, Levar

NAYS: NONE

MOTION CARRIED

Mr. Hentemann asked if there was anyway we could have some time so we can get the resident situated.

Chairman Bennett said that decision would rest with the Building Commissioner. We don't have jurisdiction to do anything like that. I would hope that he would show some compassion. Mr. Hentemann said Ray is a compassionate guy and I understand his dilemma.....sworn to uphold your ordinances.

Mr. Guhde said he did have a question when he read to order. Is that the standard policy for the city that you only have 24 hours? Mr. Sack said yes, because the reason he gave that order, is he doesn't know what is in there, if there is wires hanging, the gas furnace is working right, there has been no inspection.

Mr. Hentemann asked Mr. Sack if he went over an inspected it, that they could have a little bit of time. Mr. Sack asked how much time might be needed. Mr. Hentemann said probably 30 to 45 days, because we have to tell this woman she has to move. Mr. Salotto had some additional comments and questions of his attorney regarding if they took down the address.

Chairman Bennett then referred to Section 1309.41 of the Codified Ordinances of Wickliffe. "There shall be no more than one family or one 2-family dwelling located on a zoning lot."

Mr. Hentemann asked if they can make arrangements to look at it and make sure there are no hazards as far as health and welfare is concerned and then Mr. Salotto will have to negotiate with his tenant. In fairness to her because she has a disability, we can ease out of this situation. Mr. Guhde asked where the bedroom is located. Mr. Salotto said upstairs. Mr. Guhde questioned the disability regarding that matter. Chairman Bennett said, she has trouble standing for a long time.

Mr. Sack told Mr. Salotto to call him at 10:00 AM and 30 to 45 days would be sufficient to do what is necessary unless there is a problem detected.

Mr. Hentemann addressed Mr. Stempuzis for his input. Mr. Stempuzis said today all this Board has before them is a appeal on Mr. Sack's order to abate and they have moved to uphold Mr. Sack's decision. He added that application for occupancy could be made. Mr. Hentemann said that would be an exercise in futility. Chairman Bennett added that we are the administration side of this Board and Mr. Hentemann said he understands his position.

Meeting adjourned at 7:53 PM

Respectfully submitted,

Mary Ann Boos, Secretary

Keith Bennett, Chairman