

MINUTES
COLUMBIA CITY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, JANUARY 6, 2018
7:00 P.M.

WHITLEY COUNTY GOVERNMENT CENTER
LOWER LEVEL MEETING ROOM A/B

MEMBERS PRESENT

Marquis Jones
Dwayne Knott
Anthony Romano
Dennis Warnick

STAFF

Nathan Bilger
Amanda Thompson

ATTORNEY

MEMBERS ABSENT

Dawn Boyd

Jon Kissinger

VISITORS

Sixteen visitors signed the guest list at the January 6, 2018, Columbia City Board of Zoning Appeals meeting. A guest list is included with the minutes of this meeting.

CALL TO ORDER

Mr. Knott called the meeting to order at 7:00 P.M.

ROLL CALL

Ms. Thompson read the roll call with members present and absent listed above.

ELECTION OF 2018 BOARD OF ZONING APPEALS OFFICERS

Mr. Warnick motioned to re-elect the 2017 officers for 2018. Mr. Romano seconded the motion. The members voted unanimously to elect Dwayne Knott as Chairman and Jon Kissinger as Vice Chairman for 2018.

**CONSIDERATION AND ADOPTION OF THE DECEMBER 5, 2017,
COLUMBIA CITY BOARD OF ZONING APPEALS MINUTES.**

Mr. Jones made the motion to approve the minutes as presented. Mr. Romano seconded the motion. The members voted unanimously, approving the December 5, 2017, meeting minutes.

ADMINISTRATION OF THE OATH TO WITNESSES

Ten of the sixteen guests were sworn in by Ms. Boyd.

OLD BUSINESS

There was no old business.

NEW BUSINESS

18-C-VAR-1

Mufasa's Pride, LLC, had requested front and rear setback variances to permit the construction of a new commercial building on the east side of Main Street, east of Diplomat Drive, Columbia City. Mr. Bilger summarized the history of the property and referred to an updated site plan which was distributed to the members. The Staff Report was written with the former plan in mind. The new plan shows a smaller structure, now meeting the required rear setback and requesting only a 20' front setback, a variance of 5'. The project will require a Development Plan approval from the Plan Commission. Mr. Bilger stated that Staff supports the revised proposal.

Mr. Knott asked Mr. Bilger if there were requirements for the height of landscaping that might restrict visibility if the variance were approved. Mr. Bilger replied that landscaping is part of the Parking Code and related to the parking lot design. There are no landscaping guidelines for structures, but the sight visibility triangle does have requirements on height. Mr. Romano asked if signage is planned to be placed in front of the building. Mr. Bilger described that no signage information had been provided with the application.

Phil Troyer, architect for the project, addressed the Board and announced that the proposed building is to be a ReMax Realty office. He indicated that a Development Plan would be filed for review at the Plan Commission's February 5th meeting. Answering Mr. Romano's question, Mr. Troyer stated that a free-standing sign is planned near the front corner of the building, just off the sidewalk. The sign will comply with requirements of the Sign Ordinance.

With no further questions for Mr. Troyer, Mr. Knott asked if anyone else present wished to speak with regard to the petition. There were none who requested to speak, and the public portion was closed. Mr. Warnick then motioned to approve petition 18-C-VAR-1 as requested with the revised design of a 20' front setback and 5' variance. Mr. Jones seconded the motion, and the members voted unanimously in approval.

18-C-APP-1

Gary and Jolene Kessie et al. requested an appeal of an administrative decision regarding the use of a legal nonconforming multi-family dwelling. Mr. Bilger explained that a realtor had contacted him about a dwelling at 304 N. Main Street, Columbia City. The property is zoned R-1, Single Family Residential, but contained three apartments that had been established prior to the adoption of the Zoning Code, and therefore had constituted a

legal nonconforming use. Mr. Bilger described that the realtor had told him that the owner had leased one apartment to a relative while the other apartments were non-functional but still intact and being renovated to continue as apartments. Based on this information, Mr. Bilger felt the use had not been discontinued and provided the realtor with a Zoning Certification letter stating that the legal nonconforming use could continue with a new owner. In October 2017, the property sold to Elmer Shrock who intended to finish the renovation of the apartments. Neighbors of the property then appealed Mr. Bilger's interpretation of the Code because they felt the use had, in fact, been discontinued by the previous owner and tenant. Mr. Bilger further suggested the Board consider giving further detail to the definitions of "single-family dwelling," "dwelling unit," and "family" in order to interpret the code more clearly.

Gary Kessie, appellant and neighbor of the property in question, told the Board that he had verified with the Planning Department that the property was zoned Single Family. The Department confirmed that apartments are not permitted in the Single Family District. After the property sold, he learned that Mr. Shrock planned to renovate and reuse the apartments. Mr. Kessie said that he and the other neighbors in attendance were not in favor of apartments at this location for several reasons.

Mr. Kessie described that the homes in this area are built very close to each other. His first concern was that having multiple families in the home would increase the risk of fire and that a fire would spread quickly to other homes. The second concern was parking. Mr. Kessie said that 3 apartments could mean 4-6 vehicles. The north side of the property could be paved for this parking but would make the alley very congested. It would also be an eyesore. Mr. Kessie said he also considered that such an area might be used for broken down cars or vehicle maintenance.

Mr. Kessie stated that he had spoken with the former tenant, Stacy Britton, and she confirmed that her family intended to restore the single family use, contrary to the Zoning Certification letter that had been provided to the realtor. Mr. Kessie also described to the Board that the house was in need of many repairs. He had been told several years ago by two appraisers that it would take \$100,000 to make the home code compliant. Mr. Kessie said that Ms. Britton told him that she had received the same estimate.

Mr. Romano asked who the Brittons were in relation to the listed owner, Victoria Ream. Mr. Kessie stated that Ms. Ream is Stacy Britton's mother, and she purchased the house to give to Stacy's family. Mr. Romano then asked if the Brittons had used the entire house or if they had lived in only one of the apartments. Several of the present neighbors discussed quickly and reported that they felt the majority of the house had been used. Mr. Kessie said the single back add-on room may not have been used. Mr. Romano asked what the layout of the building was. Mr. Kessie replied that the downstairs is one apartment, the back add-on is another, and upstairs was the third, but a wall had been built to split it into two. One of the upstairs apartments only had space for a hot-plate and refrigerator, however.

Vince Judy addressed the Board and expressed that the alley is very narrow where the parking is proposed. He said that even Mr. Shrock could attest to the hardship of travelling in the area because Mr. Shrock had previously struck Mr. Judy's fence. Mr. Judy said he pointed out to Mr. Shrock that adding vehicles to this area would not make a good situation. Mr. Judy expressed to the Board that this property is not designed to accommodate multiple families.

Mr. Romano asked Mr. Bilger how many parking spaces would be required. Mr. Bilger responded that the requirement is 2 spaces per unit, however, as legal nonconforming, only 3 or 4 spaces would be required. Mr. Jones asked whether the alley that had been referenced was the north/south alley or the east/west alley. Mr. Judy replied that both alleys were of the same status. Several neighbors nodded in agreement. A woman, presumably Mrs. Judy, indicated the fence that had been knocked down was on the east side of the north/south alley.

Russell Gilliom, President of the Historical Society, introduced himself to the Board. He expressed that with the property having been used by a single family and being zoned only for single family use that in order to allow apartments, he felt the property should be, or have been, rezoned to a Multi-Family District. Mr. Gilliom pointed out that structures of legal nonconforming status seem undocumented. He asked approximately how many exist in a two-block area. Mr. Bilger stated that he had not counted them and therefore could not give an answer. Mr. Gilliom stated that he believed there were none. He explained that this area is historical, and the homes were built by prominent people. The house in question was built by Dr. Kethcart. Mr. Gilliom stressed that he would like to see the home restored and sold as a single family home, congruent with the neighborhood. He added that being divided into apartments was not the intent of the home's construction. He was also concerned that the divisions may never have been inspected and may not even be safe.

Mr. Warnick asked Mr. Gilliom if the Historical Society owned a home across the street that is rented out. Mr. Gilliom replied that they do, but it is rented as a single family structure. Mr. Warnick said he was confirming that there are rented properties in this area. Mr. Gilliom said that he is not against renters but is against the division of homes into multi-family structures that were not built for that purpose.

Mr. Knott asked if any respondents were present to speak. Kimberly Slucher, the realtor who sold the property to Mr. Shrock, addressed the Board. She passed out binders to the Board showing images of the home. She described that she had spoken with Mr. Bilger before listing the property because it was important to her to list it correctly. The binders showed images of the home when it was sold in 2006 and just before it was sold in 2017. She voiced that the images confirmed some sinks and walls had been removed, but the apartments were still intact. Ms. Slucher stated that she did not know the Britton's intent but had explained the situation to Mr. Bilger who felt the legal nonconforming status could continue. She said that Mr. Bilger did say that additional paved parking would be necessary to create a total of 4 parking spaces to accommodate the apartment use.

Ms. Slucher stated that she had mentioned the possibility of continuing the multi-family use to Mr. Kessie, but neither he nor any other neighbors conveyed any comments to her during the month long time period that the house was listed. Mr. Shrock had purchased a property on Jefferson Street from Ms. Slucher earlier in the year. Before and after photos of that home were included in Ms. Slucher's binders, showing the Board members the terrible disrepair and Mr. Shrock's incredible remodel work. She explained that Mr. Shrock wants to protect and preserve the historical aspects of this property, and that is apparent in the work he did to the Jefferson Street home.

Mr. Romano asked Ms. Slucher if the Brittons had lived in more than one apartment in the home. She replied that they did live in the first floor, and there was a bed upstairs, but there was a lot of the home that was not lived in. She showed in the binder photos that the Brittons had removed a sink and wall upstairs. Another kitchen has mold and will need to be replaced.

Elmer Shrock introduced himself to the Board. He said that the house is heated by a boiler, and a technician told him it was in excellent shape. Mr. Shrock said boiler heat is one of the safest although a fire can happen anywhere, and he understands the neighbors' concerns. On the east/west alley, he feels there is plenty of room for a parking pad. Mr. Shrock said he received many compliments from the neighbors of the Jefferson Street home, and he hopes the neighbors of this home will be happy with his plans also. Mr. Shrock intends to rent to good people and will do background checks. He hopes that the neighbors will give his tenants a chance and not jump to conclusions.

Ms. Boyd spoke briefly about the meaning of legal nonconforming and stated that the law is very clear in describing that when a legal nonconforming use is ceased, the legality is lost. The Board's duty is to decide whether or not the Brittons continued the nonconforming use. Mr. Jones asked what would constitute the loss of the nonconforming use in this case. Mr. Romano and Ms. Boyd replied that that is what the Board must decide. Mr. Knott asked how much renovation can take place without a building permit. Mr. Bilger replied that permits are only needed for work that building codes might apply to. Changes to framing, electrical, plumbing, and heating would all usually require permits, but cosmetic work would not. Mr. Bilger stated that a permit for electrical work had been obtained by John Travelbee (the owner prior to Victoria Ream) in 2008, but no other permits had been found.

Mr. Romano voiced that he felt that if the Brittons lived in one apartment while the others were still separated and unused, then the legal nonconforming use could continue. Mr. Warnick said if possible, he would like to request a continuance for 30 days to see if the parties could discuss amongst themselves and settle the issue. Mr. Romano said he would like to speak to the Brittons and ask if they lived in more than one unit. Mr. Jones pointed out that this case is caused by fear. As a landlord himself, he has seen firsthand how tenants can behave differently than expected, both good and bad. However, it is not legal to discriminate against tenants and multi-family situations. He said, "If you want to control something closely, you have to own it."

Mr. Warnick motioned to continue the discussion to the February 6th meeting. Mr. Knott said he felt the Brittons did not intend to keep the home as a multi-family dwelling. Mr. Romano said that if the residences were kept separate, then the multi-family use was preserved, but if they lived in more than one apartment, then the use was discontinued. Mr. Knott stated that he agreed with Mr. Romano. Mr. Jones seconded the motion to continue the meeting. Mr. Warnick and Mr. Jones voted in favor of the motion while Mr. Knott and Mr. Romano voted in opposition, resulting in a non-vote. Mr. Warnick then motioned to support the Staff's decision and allow the multi-family use to continue. Mr. Bilger pointed out that there are two aspects to consider, one being the Code and the other being the facts of the situation. Mr. Romano motioned to continue the discussion in pursuit of a statement from the Brittons to clarify how they used the structure. Mr. Jones seconded the motion which was carried by a unanimous vote.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further discussion, Mr. Romano motioned to adjourn the meeting. Mr. Jones seconded the motion, the members voted unanimously in favor. The meeting was adjourned at 8:25 P.M.

GUEST LIST

1. Phillip Troyer ----- 1510 W. Ludwig Road, Fort Wayne
2. Russell Gilliom ----- 8731 E. 600 North, Churubusco
3. Gary Kessie ----- 107 E. Jefferson Street, Columbia City
4. Jolene Kessie ----- 107 E. Jefferson Street, Columbia City
5. Vince Judy ----- 109 E. Jefferson Street, Columbia City
6. Deb Judy ----- 109 E. Jefferson Street, Columbia City
7. C. Taron Smith ----- 106 E. Jefferson Street, Columbia City
8. April Minier ----- 302 N. Main Street, Columbia City
9. Devin Minier ----- 302 N. Main Street, Columbia City
10. Barb Wood ----- 306 N. Main Street, Columbia City
11. Bob Wood ----- 306 N. Main Street, Columbia City
12. Jeremy Patton ----- 2044 E. Fox Drive, Columbia City
13. Angela Grable ----- 2044 E. Fox Drive, Columbia City
14. Chuck Jones ----- 79 W. Rue Dijon, Columbia City
15. Kimberly Slucher ----- 477 W. 700 North, Columbia City
16. Elmer Shrock ----- 0765 W. 050 North, LaGrange
17. (newspaper)