

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

WHITLEY COUNTY GOVERNMENT CENTER
LOWER LEVEL MEETING ROOM A/B

MEMBERS PRESENT

Marquis Jones
Jon Kissinger
Dwayne Knott
Anthony Romano
Dennis Warnick

STAFF

Nathan Bilger
Amanda Thompson

ATTORNEY

MEMBERS ABSENT

Dawn Boyd

None

VISITORS

Fourteen of the sixteen visitors signed the guest list at the February 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.

CONSIDERATION AND ADOPTION OF THE JANUARY 9, 2018, COLUMBIA CITY BOARD OF ZONING APPEALS MINUTES.

Mr. Romano made the motion to approve the minutes as presented. Mr. Jones seconded the motion. The members voted unanimously, approving the January 9, 2018, meeting minutes.

ADMINISTRATION OF THE OATH TO WITNESSES

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

OLD BUSINESS

Prior to commencing discussion of Old Business, Mr. Bilger announced that petition 18-C-VAR-2, Columbia City Partners, LLC's request for a Variance of the Parking Code, had been continued. The request will be heard at a Special Meeting scheduled for 7:00 PM on Tuesday, February 20th.

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. This item was continued from the January meeting with the hope that the parties involved would meet for resolution. Otherwise, the Board had requested additional information in order to make their determination. Mr. Bilger summarized the Staff Report which had not been changed since the previous meeting. Mr. Bilger submitted a Memo to the Board outlining the Board's request from the January meeting and Staff's findings. He disclosed that Ms. Thompson had spoken with the former tenant, Stacy Britton, and Ms. Thompson had also submitted a Memo of details from the conversation. Mr. Bilger's Memo additionally described the electric usage as provided by City Utilities. Copies of the utility record were provided to the Board.

Mr. Knott felt that based on the evidence presented, it was apparent that the tenant had used the entire house and had not intended on utilizing any space as apartments. Mr. Knott requested Ms. Boyd's legal opinion. She said that with the use in mind, it didn't matter whether or not the apartments remained intact but only how they were used. Clearly, since 2011, well beyond the 180 day maximum to preserve a legal nonconforming use, the home had been used as single-family. Mr. Knott asked if there was a code that defines an apartment. Mr. Bilger replied that per the Building Code an apartment must have sleeping quarters, a cooking area, and a bathroom. Mr. Knott then asked what defined a kitchen. Mr. Bilger stated that a kitchen would contain a sink and provision for a stove.

With no further questions for Mr. Bilger, Mr. Knott asked if anyone was present who wished to speak. Matt Shipman, attorney, introduced himself to the Board. He stated that the Ordinance guidelines are very simple, and he agreed with Ms. Boyd's opinion. He felt that Mr. Bilger had not received accurate information when he wrote the Zoning Certification letter. That inaccuracy may have been unintentional, but it did result in a certification that was based on untrue facts. Mr. Shipman explained that a mother bought this house for her daughter's family in 2011. The family removed the materials that covered doorways in order to access the whole house. They lived in the house in this way, without renting out any spaces or seeming to have the intention of doing so, for 6 years. Mr. Shipman clarified that by the Ordinance's definition this use for this time frame could not preserve the grandfathered apartment use. Mr. Shipman then also pointed out that the Comprehensive Plan describes that the use of this property be under the Single-family classification. To choose any other use would be inconsistent with the plan for the City.

Gail Yoder addressed the Board and explained that Mr. Shrock (current owner of the subject property) had done work for her at her home. She testified that she had seen many examples of his work, all of which were impressive. Ms. Yoder said that the house at 304 N. Main Street is in great disrepair, even from the outside. If Mr. Shrock is allowed to restore the home, Ms. Yoder assured the Board that it would look 100% better. The home that he had purchased on Jefferson Street was not livable when he obtained it, but now, it is a “dream house.”

Elmer Shrock was present and told the Board that he worked in construction for 20 years. He has sought the opportunity to improve properties, especially historic homes. When he bought this home, he did not have the highest bid, but the current owner chose his offer because she was familiar with his work. He said the family who had lived in this house kept the apartments in place but did not have the funds to renovate them for use. Mr. Shrock told the Board he attempted mend ties with the neighbors as the Board had suggested at the previous meeting. Mr. Shrock held an open house at his Jefferson Street property and invited the Main Street neighbors to see the quality of his work and discuss their concerns about the Main Street home. Mr. Shrock reported that there was not a very good turn-out for his event. He further stated for the Board that he purchased the Main Street property based on the information provided in the Zoning Certification letter. Had he known the apartment use could not be continued, he would not have made an offer. Mr. Shrock felt that the apartments were in such disrepair that the previous tenant could not have lived in them. Also, he pointed out that the utility records show the electric meters were kept separate, three meters for three apartments. And so, in his opinion, the units are intact and the Multi-family use preserved.

Mr. Shrock further expressed how disappointing it would be for the City to have provided him with this Certification, making him feel the property was safe to purchase for the Multi-family use, and then rescind their statements. Should that be the case, he would not have the income from tenants to afford the repair work. He may need to sell his current home to complete this project, which would be very unfortunate.

Marty Norris stepped forward to speak. He explained that he and his wife are home renovators and were familiar with Mr. Shrock’s work. Mr. Norris testified that Mr. Shrock knows and follows the building codes. His quality is as good as Mr. Norris has ever seen. Mr. Norris encouraged the Board to consider that a well restored home will add to the quality of the City, regardless of how many people live in the structure. Although one family occupied this house, in Goshen, where Mr. Norris lives, there are many multi-family dwellings that are occupied by one large family and still considered apartments. He stressed that the use could not be determined by the relationship of the occupant(s). Also, Mr. Norris knows of many multi-family dwellings that were well taken care of until they were converted and sold to single families who let them fall apart. Mr. Norris encouraged the Board not to discriminate against multi-family situations. He concluded by stating that Mr. Shrock’s goal is to enhance the property in every way possible which is good not only for his property but also for the City.

Mr. Knott took a moment to express that Mr. Shrock's workmanship was not in question. Mr. Kissinger agreed and confirmed he had heard good things about Mr. Shrock's restorations. Mr. Kissinger did point out, however, that Mr. Shrock refers to this dwelling as a "home," a singular dwelling, not "apartments." Also, Mr. Shrock says he wants to restore the home historically, but this house was not build as apartments. Historically, it was a Single-family home. Mr. Kissinger asked if the property would be worth more as a restored Single-family dwelling or as apartments. Mr. Shrock explained that he needed the income from tenants to afford the renovations. It's resale worth is only applicable if he intends to sell it, which has not been his plan. If he had known there was a chance that the Zoning Certification letter would not be upheld, he would not have been interested in the property for the price that he paid.

Mr. Romano sympathized with Mr. Shrock, but said that the Board must base their decision on the Zoning Ordinance and consider whether or not the apartment use had been discontinued for more than 180 days. One family was using all the units for the 6 years that they lived there, which is evident in the utility usage and removal of separations. That is what must be considered. Mr. Warnick cautioned however, that the Board must also take into account that Staff had declared in the Zoning Certification letter that this property's non-conforming use was still legal to continue. Mr. Bilger responded that the letter described the use could continue based on the information he received from the realtor who told him the apartments were intact and being renovated for continued use as apartments. Mr. Knott asked if the realtor misled Mr. Bilger or perhaps misrepresented the property. Mr. Bilger replied that after a month's worth of time gathering additional information, he did feel the use of the property was misrepresented to him, even if unintentionally.

Mr. Knott explained for those present that the Board must vote based on how the conditions of this case align with the Ordinance. He stated that if a further appeal was to be filed, it would be before the Court. He also suggested that Mr. Shrock may consider taking legal action against his realtor. Mr. Shrock asked what information the realtor had provided in error. Mr. Knott replied that she had told Mr. Bilger the apartments were still intact. Mr. Shrock responded that the apartments *are* still intact. Mr. Knott attempted to explain that because the tenant had removed the separations and lived in the apartments as one home, he felt the apartment use had been discontinued.

Yolanda Norris addressed the Board. She expressed that it would not be right for the Board to say that Mr. Shrock couldn't update the apartments. She felt he should be allowed to maintain the property in the same form that it was sold to him under. She said it would not be right for the Board to rescind the statements of the letter that was provided to Mr. Shrock and led him to spend a large amount of money. She expressed that if the utilities were never combined, then the apartment use should be considered intact. One family would not pay three bills for the same usage. Also, if the neighbors wanted this property to have a Single-family use, then they should have purchased it themselves and made it that way. Ms. Norris said it's not right that the Board could take away the certification that Mr. Shrock received in his letter.

Gail Yoder asked if anyone had inspected the property before writing the letter. Mr. Bilger replied that the property was not inspected. It is typical practice to accept the statements of realtors because of the complications of entering properties and obtaining rights to do so.

Gary Kessie addressed the Board. He also addressed Mr. Shrock and told him he had nothing against him, and he had faith that Mr. Shrock truly is a great craftsman. Mr. Kessie expressed that he would be very happy to have Mr. Shrock as his neighbor. To the Board, Mr. Kessie said that he had spoken with the former tenants on a regular basis and knew for certain that they intended to make the house in question into their home, a Single-family home. Mr. Kessie said that he did put a bid in on the property, but Mr. Shrock's bid was higher. He has no hard feelings about that and sincerely believes Mr. Shrock would be a good neighbor.

Mr. Shipman stepped forward again and wanted to say that this is the sort of problem that arises when someone seeks legal advice from a person who is not a lawyer. Mr. Shipman felt that if Mr. Shrock had requested the zoning information from his lawyer, the lawyer would have provided him with a different answer than the realtor. Mr. Shipman told the Board that they should not feel responsible to fix the problem that occurred between Mr. Shrock and his realtor.

No one else wished to speak, and Mr. Knott closed the public portion of the meeting. The Board began to discuss. Mr. Romano motioned to reverse the administrative decision and stated that the nonconforming Multi-family use was no longer legal. Per the suggestion of Mr. Jones, Mr. Romano added that this ruling be for this particular piece of real estate only. Mr. Kissinger seconded the motion. The members voted 3-1-1 to approve the motion with Mr. Warnick against and Mr. Jones in abstention. Mr. Bilger stated that the parties would receive a letter outlining the Board's decision.

NEW BUSINESS

Mr. Bilger repeated that petition 18-C-VAR-2 had been continued to a Special Meeting scheduled for 7:00 PM on Tuesday, February 20th. There was no other new business to discuss.

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 8:07 P.M.

GUEST LIST

1. John VanHouten ----- 519 N. Walnut Street, Columbia City
2. Kathy Van Houten ----- 519 N. Walnut Street, Columbia City
3. Vince Judy ----- 109 E. Jefferson Street, Columbia City
4. Deb Judy ----- 109 E. Jefferson Street, Columbia City
5. Matt Shipman, attorney ----- 119 S. Main Street, Columbia City
6. Gary Kessie ----- 107 E. Jefferson Street, Columbia City
7. Jolene Kessie ----- 107 E. Jefferson Street, Columbia City
8. April Minier ----- 302 N. Main Street, Columbia City
9. Gail Yoder ----- Goshen, IN
10. Yolanda Norris ----- 503 Colorado Street, Goshen, IN
11. Marty Norris ----- 503 Colorado Street, Goshen, IN
12. -not legible-----
13. Elmer Shrock ----- 0765 W. 050 North, LaGrange
14. C. Taron Smith ----- 106 E. Jefferson Street, Columbia City