



February 26th, 2019 Board of Zoning Appeals Meeting Minutes

Call to Order

The meeting of the Board of Zoning Appeals was called to order at 6:01p.m. by Chairperson John Wells.

FOIA

The Zoning Administrator read the Freedom of Information Act. Notice of the meeting with an agenda was publicly posted, published and forwarded to the media no less than 24 hours prior to adjournment.

ROLL CALL

Conducted by Planning & Zoning Administrator and quorum was present

Present:

Cecil Hutcherson

John Wells

Jeremy McKinney

Tony Axom

Absent:

Scott Garrison

Review and Approval of the January 22nd, 2019 Minutes

Chairperson John Wells, asked for a motion for the minutes of January 22nd, 2019, to be approved. Cecil Hutcherson made a motion, Tony Axom seconded the motion, and the board voted unanimously to approve the previous minutes.

New Business

I. Public Hearing on Appeal Application

The Zoning Administrator presented the Appeal to the board. The Appeal was submitted by Attorney Clayton L. Jennings on behalf of the property owner, Rosemarie S. Moody for property located at 60 Ridge Road. The request was to seek the continued use as an apartment building versus a single family residence located in a R-15 Zoning

District. The Zoning Administrator provided background on the case. The staff recommended that the board deny the request for the appeal based on the Zoning District R-15 not permitting a multi-family or an apartment use and the property owner not obtaining a required business license to operate an apartment building.

Attorney Danny Crowe representing the Town of Lyman, introduced himself to the board. The Town attorney called Darrell Purchase, Zoning Administrator, as his first witness. Mr. Purchase was sworn in and testified as to the Zoning of the property and the permitted uses allowed in a R-15 Zoning District. Mr. Purchase was asked if a business license would be required and what process would need to be followed. Mr. Purchase stated yes, a license would be required and a Zoning Compliance application would be required before a business license could be obtained. Certain building codes would also need to be met before the Zoning application could be approved. Attorney Clayton Jennings objected to the business license requirement and building codes due to the fact his client was only told of the use violation. Attorney Danny Crowe stated that based on the Nonconforming use section 818 of the Town of Lyman Code of Ordinances, the use had to be a lawful use. It was not a lawful use since the property owner did not obtain the required business license, seek clearance from the Spartanburg County Building Department or obtain requirements from the Tiger River Fire Department.

Attorney Clayton Jennings cross examined M. Purchase. Mr. Purchase was asked if he was aware the building was used as a multi-family unit back on January 1950 with four families living at the dwelling with three members living in each unit based on the affidavit that was submitted. Mr. Purchase stated he did knowledge that the document showed four families living at the residence. Mr. Purchase was asked if he new if the building codes were in place in 1950 in Spartanburg County. Mr. Purchase stated that he did not know if there were building codes back in 1950. Mr. Purchase was questioned if he had received any complaints from the neighbors regarding the property. Mr. Purchase stated that he did not. Mr. Purchase was questioned about the lawful use of the property. If every landlord who has a rental property does not have a business license are they operating unlawfully? Mr. Purchase stated that if the properties were converted from a single family to a multi-family or operating a multi-family use in a single family district, they would be operating unlawfully. Mr. Purchase was asked that if there was a violation of the building code, does that make a property unlawful? Mr. Purchase stated that if the building was converted to a multi-family use, then the building codes would be required, and the property would be used unlawfully until the building codes and International Fire codes were met. Mr. Jennings asked Mr. Purchase that until today, his client was never informed of the violations of the building code or even discussed the building codes with Ms. Moody. Mr. Purchase stated that was true. Attorney Danny Crowe, questioned Mr. Purchase if the R-15 zoning district prohibits any other residential use. Mr. Purchase stated the R-15 district does not permit multi-family uses but does permit other uses. Mr. Purchase was asked he had checked with the Spartanburg County Property Tax Records to see if there was any homestead exemption claims listed. Mr. Purchase stated that there was homestead exemption claims from 2009 to 2013. Claims were for single family, owner occupied.

Mr. Purchase was asked that to his knowledge has this property ever been operating as a multi-family since 1950 or 1930 or even after 1989. Mr. Purchase stated that to his knowledge, the property had only been operating as a single family use. Mr. Jennings questioned Mr. Purchase if he was aware that Ms. Moody was living at the residence during those years. Mr. Purchase stated that Ms. Moody did tell him that she lived there during that period. Mr. Purchase was asked if he was aware that the homestead exemption was only for her. Mr. Purchase was not aware of that issue. Board Chairman Wells asked Mr. Purchase if he knew when the building was last updated. Mr. Purchase stated that he did not know when the building was last updated. Mr. Wells asked if apartments are inspected annually. Mr. Purchase said he believed that they are inspected annually. Mr. McKinney asked Mr. Purchase for clarification on what the property tax records showed in 1989. Mr. Purchase stated that the record should the property being a single family.

Attorney Danny Crowe called Noel Blackwell. Mr. Crowe asked Ms. Blackwell if she review business licenses after she was hired. Ms. Blackwell answered yes. Ms. Blackwell testified that the current ordinance 8.3 was adopted in 1998 and an earlier ordinance was adopted in 1976. Mr. Jennings questioned Ms. Blackwell if in 1950 was there any requirement for a business license. Ms. Blackwell stated that she did not know. Mr. Jennings asked Ms. Blackwell if she recalls seeing the affidavit showing that in 1950, four families were living at 60 Ridge Road. Ms. Blackwell said she did see on the document that four families were listed.

Attorney Jennings called on the property owner Rosemarie Moody to testify. Mr. Jennings asked Ms. Moody when she purchased the property and when she bought the property was it being used as a rental property. Ms. Moody stated she purchased the property in 1989 and that it was being used as a rental property. She was asked if there were any changes made to the property after she purchased it. Ms. Moody stated that the only thing she did was convert two apartments into one for herself and rent the other two apartments. Ms. Moody was asked if after she purchased the property, did she change the property to another non-conforming use, reuse or reoccupy the use after a six month period or alter the building in excess of 50% of the cost. Ms. Moody stated she did not. Ms. Moody was asked about the document that showed four families living at the residence in 1950. She stated that she did see the document and added that it showed how many people were living in each room. Ms. Moody was asked if she ever heard of the building being called the "Teacherage" back in 1930 and if so why was it called that? Ms. Moody said she was aware of the name and that teachers would live at the property. Ms. Moody was asked when she purchased the property how was it being taxed. She stated that it was listed as income property and taxed as rental property with owner not living there. Ms. Moody was asked if she claimed homestead exemption and why. She said yes, and to save money on taxes. Ms. Moody was asked that the Town of Lyman was not incorporated until 1954 or 1958 and if she believed the town's ordinances would not have applied in 1950. She agreed.

Attorney Danny Crowe cross examined Ms. Moody. She was asked how long she lived in Lyman? She stated that she lived in Lyman from the time she bought the house in 1989

to 2009. Mr. Crowe asked her that she did not know what went on in the house before she bought the house. Ms. Moody said she did not. She was asked when did she convert the two apartments into one and if she got permits for the work. Ms. Moody said she did the work in 1993 and did not get any permits. Ms. Moody was asked if she ever went to the town and tell them she has a rental business. She said no. Ms. Moody was asked if the apartments have separate meters for the utilities? She stated there are no separate meters for water but separate meters for electric. Ms. Moody was asked if there were any County code inspections or fire inspections done since she owned the property. She stated no. She was asked if there is an automatic sprinkler system in the building. She stated no.

Chairman Wells, asked Ms. Moody if she knew how many times the building was updated. She was not sure but believed the building was updated in the 1950's. She was asked was she was collecting in rent. Based on the rental income, Chairman Wells asked her if she would not get the same if she rented as a single family house. Ms. Moody said she probably could if she spent \$100,000 on making the changes. Board member McKinney asked Ms. Moody if she is currently paying insurance as a rental property. Ms. Moody stated that she is and also paying taxes as a rental property. Mr. Jennings asked Ms. Moody since the 2002 code, has the use of the property changed? She stated no.

Attorney Jennings stated to the board that the affidavits from Mr. Charles Baab and Rosemarie Moody were not provided to them. Attorney Crowe objected that Mr. Baab was not there to testify and that you cannot question an affidavit.

Chairman Wells asked if any from the audience had any comments. Shawn Harter from the Tiger River Fire Department spoke. He stated how the property is listed on the tax record determines if the property needs to be inspected. If the property is listed one way with the county and the intended use is another way, then the property would need to meet the requirements of the use. He stated that the intended occupancy is what needs to be on the county records. Mr. Harter was asked if apartments are inspected annually and if he has inspected this property. He stated that multi-family uses are not inspected annually, and he has not inspected this property.

Attorney Crowe in closing arguments stated that the position of the town is that the preexisting use has to be a lawful use. We do not have a lawful use and asked the board that the decision by the Administrator be affirmed and that an order be prepared.. Attorney Jennings in his closing argument stated that since 1989 the building was used as apartments and never stopped. City officials testified that the zoning code went into effect in 2002, 13 years after his client purchased the property. Under the Town's ordinance regarding nonconforming uses, the property continued as a nonconforming use. No alterations were made and the use of the property has always been residential not commercial. The use has been a lawful use. Mr. Jennings stated that the grandfather clause in Sec. 818 meets the requirements and asked the board to allow his client to maintain the property as status quo as it always has been.

Board member Mr. Axom asked if the tenants were receiving their mail at the property? Ms. Moody stated that they do receive mail at the property. Chairman Wells asked for a motion. Cecil Hutcherson made a motion to reverse the Zoning Administrator's decision and was seconded by Tony Axom. All were in favor.

Public Hearing on Variance Application

Chairperson John Wells read into the meeting the application submitted by the Neil Fogleman of Fant, Reichert & Fogleman. The owner is seeking a variance on three lots; lots 19, 20 and 21 within the Gabriel Point Phase 2 subdivision of 30' from the required front setback vs 40' in a R-15 Zoning district. Mr. Purchase told the board that the property had been posted for the public hearing and that the property owners with 200' were notified by mail. Also a notice of public hearing was advertised in the Herald-Journal.

Chairperson John Wells made a motion to approve the variance, Cecil Hutcherson seconded the motion and all were in favor.

Adjourn

Chairperson John Wells made a motion to adjourn and was seconded by Tony Axom. The board voted unanimously to adjourn the meeting at 7:39 p.m.