

**ZONING BOARD OF APPEALS
APPROVED MINUTES**

January 28, 2016

Call to Order:

Chairman Paul Jackson called the Zoning Board of Appeals meeting to order at 7:01 PM

Roll Call: Paul Jackson, Bob King, Paul Long, Ralph Manting, Jayne Graham, Jane Johansen, Chris Jane

Present: Paul Jackson, Bob King, Paul Long, Jane Johansen, Chris Jane

Abstain: None

Excused: Ralph Manting, Jayne Graham

Absent: None

Also Present: Mark Sweppenheiser, Director of Neighborhood Services, Eric Williams, City Attorney

There was one (1) person in the audience.

Moved by Chris Jane, seconded by Paul Long to approve the minutes of the November 19, 2015 ZBA meeting.

Motion passed unanimously

Public Comment Not Related to Items on the Agenda: None

Public Hearing #1:

Chairperson Jackson reviewed the Public Hearing procedure for the audience and opened the Public Hearing at 7:04 PM to consider the request received for 1220 North State Street. The applicant has submitted an application to the ZBA requesting the ability to substitute all uses in the R-3 Zoning District for the Class A Nonconforming Use Designation at 1220 North State Street.

Staff Report

The property at North State Street was granted a Class A Nonconforming Use Designation on December 5, 2008. All application materials and evidence indicated the use was for single-family. The Class A Designation allows for the reconstruction of the structure in the event of total destruction and was requested by the current applicant.

The property is zoned C-3 and the lot size is 0.92 acres. The C-3 District allows residential dwelling units except on the main floor and basements of those structures.

Section 7.1:5(6)(e) states that A Class A nonconforming use may be substituted for another nonconforming use on the same property in the same structure when the ZBA determines that the change would not increase the nonconformity of the structure or use.

The applicant is requesting to substitute all uses in the R-3 Zoning District, including the ability to rent to four (4) unrelated individuals, under their Class A Nonconforming Use Designation.

Section 7.1:5(3) Standards for Approval of Class A Designation

- a) The continuance of the use would not be contrary to the public health, safety, or welfare, or the spirit of this Ordinance.
- b) That the use or structure does not, and is not likely to, significantly decrease the value of nearby properties.
- c) That the use was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.

Staff was contacted by Silvernail Realty in November of 2014 to find out what the rental limits would be. They were told that nonconforming structures in the commercial districts would be limited to single-family limits. The structure has not gone through the rental inspection process and civil infractions have been issued to the manager and owner for zoning violations and allowing occupancy without a current Housing Maintenance Certificate.

An aerial photo with delineated property lines has also been provided, accuracy is estimated at plus or minus one (1) foot.

Staff's recommendation is that the applicant does not come before you in good standing with Neighborhood Services. The applicant changed the use in 2014 which is contrary to the Class A Nonconforming Use Designation. The Class A Designation was granted because the structure had always been used as a single-family residence. Single-family housing was a permitted use on that parcel in the past. Changing the use in 2014, requires that Section 7.1:5(3)(c) be adhered to and that the use was lawful at the time of its inception. Changing the use in 2014 was not lawful. The request should be denied to allow all the uses in the R-3 Zoning District to be substituted for the Class A Nonconforming Use Designation.

Applicant's Statement:

Attorney Zachary Boerson of Lobert Law Office, 119 S. Michigan Ave., Big Rapids MI 49307, introduced himself as the representative of the property owner, Joshua Ruttkofsky who resides at 618 Harborview Way Ketchikan AK 99901.

Mr. Boerson began by offering an apology on behalf of his client. He stated that Mr. Ruttkofsky was regretful that he could not attend the hearing. Mr. Boerson also stated that Mr. Ruttkofsky was apologetic that his property at 1220 N. State had caused an inconvenience to the City.

Mr. Boerson stated that Silvernail Realty was contacted by Mr. Ruttkofsky in 2014 to list and rent out the property. Mr. Ruttkofsky assumed that the house being rented would be done legally and in compliance with the City Zoning requirements. Mr. Ruttkofsky now realizes that was not the case, and he understands that ultimately the responsibility is his and not Silvernail Realty's.

Mr. Boerson stated that the main reason Mr. Ruttkofsky is requesting the variance is so that he will not have to evict the tenants that are currently living at the property. Mr. Ruttkofsky intends to sell the property. Mr. Ruttkofsky does understand that if the variance is not granted, he will be required to remove the tenants, but he is hoping that they would be allowed to stay at least until the end of the current school term to avoid as much inconvenience to the tenants as possible.

Mr. Ruttkofsky is asking for the variance as a method to gain compliance with the City's Zoning Ordinance.

Chairperson Paul Jackson called for those who wished to speak in support of the request – None

Chairperson Paul Jackson called for those who wished to speak in opposition of the request – None

Chairperson Paul Jackson called for any written or telephonic correspondence received by staff – None

Applicant Rebuttal - None

Chairperson Jackson closed the Public Hearing at 7:14 PM and went into fact finding.

Fact Finding:

Jane Johansen stated that she is in agreement with staff's recommendation to deny the request because of the disregard that has already been shown for the City's Zoning Ordinance. A property owner should not be rewarded for initially doing the wrong thing. Johansen believes that allowing students, rather than a single family, to reside at the property changes the dynamic of the area: more people, more traffic, more noise. Johansen also mentioned that the property continued to be rented to students, even after Silvernail Realty and the property owner had been ticketed as a result of the Zoning Ordinance violation.

Mark Sweppenheiser stated the property owner was trying to work through the process.

Paul Long pointed out that it is now 2016, emphasizing that the property has been in violation for approximately two (2) years.

Jane Johansen commented that even if the property owner wasn't aware of the limitations for renting the property, Sue Glatz, owner of Silvernail Realty, is more than aware of the regulations and violated the Zoning Ordinance intentionally.

Mark Sweppenheiser stated that, in the applicant's defense, although the property has been in violation for two (2) years, he was only made aware of the violation a few months ago and has been in contact with the property owner trying to resolve the issue since then.

Sweppenheiser also stated that although the Zoning violation is definitely an issue that needs to be addressed, at the end of the day he is most concerned about the safety of the students living at the property. 1220 N. State Street has not been inspected since becoming a rental in 2014. Yearly inspections for all rental properties is a requirement of the City of Big Rapids Code of Ordinances.

Jane Johansen stated that in the Master Plan for the City of Big Rapids it calls for all of the properties in the 1200 block of N. State Street to eventually be commercial properties.

Paul Long asked if Silvernail Realty was still acting as an agent for the property. Mark Sweppenheiser stated that he has been informed that Silvernail Realty has the property listed for sale. In addition, Silvernail Realty is managing the rental property on behalf of the property owner until it is sold. Sweppenheiser stated that both the property manager and the property owner have been penalized in an effort to bring 1220 N. State Street into compliance.

Paul Jackson stated that his position on the matter is: 1) The property is not in compliance. When coming before any board, regardless of the circumstance, if an applicant is not compliant it will not work in their favor. 2) The property has not been inspected, creating further non-compliance. 3) The R-3 Zoning District was not intended for residential properties in which up to four unrelated persons are allowed to live together. Jackson believes that these items have essentially created “three (3) strikes” against the property.

Paul Long asked if it was necessary for the applicant to request the ability to substitute all uses for an R-3 District in order to meet compliance. Mark Sweppenheiser answered that it was not necessary, and typically that type of request would be considered a request to re-zone property, not a use variance. Long stated that his concern is that the request to substitute all uses is too much of a blanket request.

Mark Sweppenheiser challenged the board to consider whether or not allowing the substitution of any use allowed in R-3 Districts for the property at 1220 N. State Street would create more of a non-conforming situation at the property. The board agreed unanimously that it would.

Paul Jackson asked City Attorney, Eric Williams if he had anything to add. Williams stated that the board had covered everything from a fact finding aspect and he did not have anything more to add to the discussion.

MOTION

Motion was made by Jane Johansen, seconded by Chris Jane

Motion has been made to grant the request to substitute all uses in the R-3 Zoning District, including the ability to rent to four (4) unrelated individuals, under the Class A Non-Conforming Use Designation at 1220 N. State Street.

Yeas: None

Nays: Paul Jackson, Bob King, Paul Long, Jane Johansen, Chris Jane

Motion failed.

Public Hearing #2

Chairperson Jackson opened the Public Hearing at 7:27 PM.

Staff is requesting that the Class A Designation for 1220 N. State Street be revoked.

Section 7.1:5(5) states Any Class A designation shall be revoked following the same procedure required for designation upon a finding that as a result of any violation of the conditions established by the ZBA, or due to changes in the use that cause it to no longer meet the requirements for approval of Class A designation.

Staff Report:

Staff's recommendation is that the applicant does not come before you in good standing with Neighborhood Services. The applicant changed the use in 2014 which is contrary to the Class A Nonconforming Use Designation. The Class A Designation was granted because the structure had always been used as a single-family residence. Single-family housing was a permitted use on that parcel in the past. Changing the use in 2014, requires that Section 7.1:5(3)(c) be adhered to and that the use was lawful at the time of its inception. Changing the use in 2014 was not lawful. The Class A Nonconforming Use Designation should be revoked for 1220 N State Street.

Applicant's Statement:

Attorney Zachary Boersen of Lobert Law Office, 119 S. Michigan Ave., Big Rapids MI 49307, representative for the property owner of 1220 N. State Street, Joshua Ruttkofsky, expressed that his client is completely willing to bring the property into compliance with the Zoning Ordinance. Mr. Ruttkofsky is asking that he not be punished for a violation, while ultimately is his responsibility, he did not cause.

Mr. Boersen conveyed the concern that Mr. Ruttkofsky has regarding the marketability of the property if the Class A Designation were to be revoked.

Chairperson Paul Jackson called for those who wished to speak in support of the request – None

Chairperson Paul Jackson called for those who wished to speak in opposition of the request – None

Chairperson Paul Jackson called for any written or telephonic correspondence received by staff – None

Applicant Rebuttal - None

Chairperson Jackson closed the Public Hearing at 7:31 PM and went into fact finding.

Fact Finding:

Mark Sweppenheiser informed the board that this is a public hearing that could be held at a later date. While the applicant has not shown much good faith to this point, Sweppenheiser stated that it is still fairly early in the compliance process. He suggested possibly re-considering revocation of the Class A Designation at 1120 N. State Street in three (3) months if the property was still non-compliant at that time.

Sweppenheiser admitted that he had not taken into account the marketability aspect of the property when he requested the Class A Designation be revoked.

City Attorney Eric Williams requested a moment to speak with Mark Sweppenheiser regarding the revocation of the Class A Designation. Williams suggested that staff withdraw the request for revocation, with the ability to bring it back in three (3) months, giving the property owner the opportunity to become compliant on the previous Zoning Ordinance violation.

Williams stated that if the Class A Designation was revoked, the property would only be able to be sold as commercial.

Sweppenheiser formally withdrew the request to revoke the Class A Designation at 1220 N. State Street, with the option to bring the request back to the board if Mr. Ruttkofsky is still not compliant in three (3) months.

MOTION

Motion was made by Paul Jackson, seconded by Paul Long

Motion has been made to accept the applicant's withdrawal of the request to revoke the Class A Non-Conforming Use Designation at 1220 North State Street, with the option to resubmit the request if necessary.

Yeas: Paul Jackson, Bob King, Paul Long, Jane Johansen, Chris Jane

Nays: None

Motion passed.

Other Business:

There being no further business to come before the board, the chair declared the meeting adjourned at 7:38 PM

Respectfully submitted,

Stacey Johns
Secretary