



ZONING BOARD OF APPEALS

Quality Services for a Quality Community

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MINUTES

September 4, 2019

54-B District Court, Courtroom 1
101 Linden Street

Present: Chalgian, Cole, DeVries-Burd, Hittner, Lal, Laxton, and Ruddell

Absent: Ditschman

Staff Present: Haywood

1) OPENING

A) Roll Call

Laxton called the meeting to order at 7:00 p.m.

At the calling of the roll, members Ditschman was absent.

B) Approval of the Agenda

Agenda was approved unanimously as presented.

C) Approval of the Minutes

Minutes of July 17, 2019 were approved unanimously as presented. Minutes of August 7, 2019 were approved unanimously as presented.

2) COMMUNICATIONS

A) Written – None

B) Oral – None

3) NEW BUSINESS – None

4) **OLD BUSINESS**

- A) **Consideration of an application from D.J.H Realty Inc. and John Hudgins for the property located at 343 Division Street, in the R-2, Medium Density Single-Family Residential, zoning district and the R-O-1 Residential Rental Restriction Overlay District for a variance from the following requirement of Chapter 50 – Zoning of the Code of the City of East Lansing:**

Section 50-262(3)d. – The keeping of not more than one roomer by an owner residing in a single-family dwelling, except that a person owning a single-family dwelling on the effective date of Ordinance No. 900 shall be permitted to keep two roomers while continuing to own and reside in the dwelling. The maximum occupancy shall not exceed three unrelated persons, including the owner, for an owner-occupied dwelling or two unrelated persons for a non-owner-occupied dwelling. For the purposes of this subsection, persons comprising a “domestic unit” as defined under “Family” in section 50-6 shall be deemed related persons.

The applicant is proposing to convert the existing single-family dwelling from a Class II rental license, which permits the occupancy for up four unrelated persons, where one of the four must be the owner, to a Class IV rental license, which would permit the occupancy for up to four unrelated persons without the requirement for an owner to reside in the dwelling.

Haywood gave a brief background of the appeal.

Hittner asked if there is a request from the Residential Rental Restriction Overlay. Haywood replied negatively.

Laxton asked if the ZBA has the authorization to do what is being requested. He stated Section 50-61, more specifically under 60-64 it talks specifically granting variances not eliminating variances. The language specifically says, “granting of variances.” Secondly, as it relates to the variances in his mind, it seems that the initial variance granted by a former district judge, really was not in the purview they’re authorized under the section. In the enabling section it talks in terms of being able to do things in terms of physical characteristics (size, width, etc.) and under 50-64(3)(b) talks about what the ZBA is empowered to grant a variance.

Laxton continued, if we were to invalidate the condition, would that automatically grant the applicant a Class II license therefore, doing something which otherwise would be lawfully allowed in that area. He asked if the Board is violating its own ordinance if they allow this.

Laxton opened the public hearing.

Jeffrey P. Ray, 2500 Lake Lansing Road, Lansing, 48912, the applicant’s attorney addressed the Board and gave some background history.

Laxton stated Judge Canady may be the only one with the authority to deal with this request. He further stated the underlying conditions are a result of the variance being approved in 1997.

Ray asked why the overlay district is even relevant because his client already has a license to rent.

Ray stated he does not believe any of the conditions prevents the ZBA from doing what the appeal is asking them to do.

Ray stated they are grandfathered in. Laxton stated they are grandfathered in with the condition that an owner occupy the property.

DeVries-Burd stated there is a bigger picture the City is looking at for the neighborhood; its not just one house but the surrounding houses that need to be taken into consideration.

Ruddell asked what the Master Plan say about this part of the City. She further stated the Master Plan changes every 10 years or so.

Ray stated Section 50-61 makes the ZBA an autonomous body and the status of the property is not going to change only what they're asking them to do is tweak one portion. Ray continued that it is likely that those properties that currently have a rental license will continue renting with those licenses. They're not asking for any change other than the removal of owner occupied, its not changing the number of occupants.

Hittner asked why the new owner who purchased the property with the condition should be the beneficiary of the ambiguities of previous boards and commissions. As they can continue to use the property the way they purchased it without limitation. It is only for the convenience of your client that the change is being requested. Other families would be willing to purchase the property while their student goes to MSU and live there as owner occupied; there are other options.

Ray replied that Hittner is right, they knew what they were buying but they didn't wait until the client was ready to graduate to request the condition be removed; they started almost immediately with the Housing Commission and later City Council.

Haywood stated the property is in the R3 category of the Master Plan which allows for row house and small multiplex building types limited to these building types at a density of 16 units per acre with heights of 2-1/2 stories or 35' by right.

Ruddell asked if the Master Plan allows for more density than what is currently here. Haywood replied it is not a zoning district.

Jeffrey Hank, 349 Division, addressed the Board and stated he and Mr. Muska are the only two non-rentals on the block. The idea that the area will turn back into single family homes is unlikely. He further stated that he is in favor of changing the condition and would like to have the same opportunity afforded to him and Mr. Muska.

Laxton stated that every property needs to stand on its own so they cannot condition the appeal on allowing both the Hank and Muska property the same opportunity.

Laxton closed the public hearing.

Hittner asked for the sake of making a motion, what exactly is the applicant requesting. Haywood replied in his opinion they are asking for a use variance which he addresses in the Staff Report.

Laxton stated he is clarifying for the record that the applicant is asking to draft a motion which is contrary to the ordinance but at that point then it automatically must be a no go. Is there some avenue which we can articulate a motion that would be based upon criteria that would have a legal chance of passing?

Hittner asked if the variance is only for the removal of the owner-occupancy condition.

Laxton asked the applicant exactly what they are seeking. Ray replied removal of the owner occupancy restriction tied to the variance and they also ask that the classification be changed to a Class IV.

Laxton moved to approve the request of the applicant to remove the condition of owner occupancy from the prior variance approved in 1997; condition number 4 that states the variance will remain valid if the property remains owner occupied and additionally to approve the request to change the rental license Class II to a Class IV.

Chalgian seconded the motion.

Laxton asked Haywood if he knows of a legal mechanism to remove a condition based upon the granting of a prior variance which would allow the ZBA to do that.

Chalgian asked if it is possible to grant a new variance that does not remove the condition but rather does not include that condition. She further stated she does not get where they have the authority to change the classification of the rental license.

Laxton replied the problem is they do not have a variance request before the Board; they would be requesting a variance for something they've already been granted a variance for and the language for granting a variance does not include modify, amend, delete, or rescind. He questions whether they have the ability to do it.

Ray asked why they don't look at the same variance as 1997 but remove the condition. Laxton stated that part of the oath of the Board is to do things that do not violate the law. He further stated that if they were to strike the condition, they would then be asking the ZBA to issue a Class IV license which they have no jurisdiction to issue a rental license at all.

DeVries-Burd stated she is willing to look at it but struggles with the idea that if the Board doesn't have the authority to change a variance, she does not see how they can entertain the idea.

Chalgian stated she sees they are asking for the variance to remain with all the other conditions intact except the owner-occupied condition. She asked what avenue an owner must modify an approved variance. Laxton stated he believes the courts is where they would take place, but the Board should consider going back to City Council and add the word “modify” to the charge of the ZBA, so they can change a variance or condition.

Laxton stated the Residential Rental Restriction Overlay district was passed for a purpose and if the ZBA were to bypass the policy and grant the Class IV license they would essentially be ignoring the overlay.

Laxton stated he would be voting no because he does not believe they have the authority to rescind a previously granted condition on a previously granted variance; he doesn't think they have the authority to grant a rental license; if it were granted it would create a situation that would run counter to Section 50-64(3)(a)(2) which states the variance shall not permit the establishment of a use of a given district which is prohibited therein; and as such will not be voting in favor.

Ruddell stated he agrees with Laxton and sympathizes with the situation; therefore, will be voting no.

Chalgian stated she is struggling with the classification of the license and as such will be voting no.

Hittner stated this house and all the houses on the block fall in an overlay district and it is possible the previous owner was one of the signatures of the residential rental restriction overlay; it seems to be beyond whatever authority the Board has the condition exists and the ZBA is being invited to create a variance to the overlay district and he will not be voting in favor.

Ray readdressed the Board and asked that if the members do not feel they have the authority to make a change then state that reason and vote no as it will be beneficial when it comes before Judge Canady.

Laxton stated he reaffirmed what he said before, part of his vote is the authority and part of it is the substantive basis of the question involved.

Vote: All nays. Motion failed unanimously by a vote of 0 to 7.

5) STAFF REPORTS – None

6) BOARD MEMBER CONCERNS

Annette Irwin introduced herself and Haywood thanked her for stepping up as interim Director of Planning Building and Development.

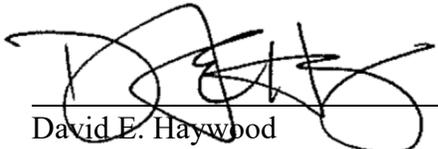
7) ANNOUNCEMENTS – None

8) ADJOURNMENT

Motion: Hittner moved to adjourn the meeting at 8:32 p.m. Ruddell seconded the motion. **Vote:** All yeas. Motion passed unanimously by a vote of 7 to 0.



Brian Laxton
Chair



David E. Haywood
Secretary