

OFFICIAL MINUTES – BOARD OF ZONING APPEALS – SEPTEMBER 15, 2003

Members Present

Tom Mosier
Edgar Lowe
Mike Cunningham
Glen Garrett

Staff Present

Benny Lane, Codes Director
Bill Terry, Planning Consultant

Others Present

Eleanor Woodard
Ken Woodard
Carolyn Goff
Tant Dowell
Bryan Cowan

Chairman Mosier opened the meeting. The approval of the minutes of the previous meeting was deferred.

Chairman Mosier asked Bill Terry to present the case. Terry responded as follows:

Case No. 03-9-453

Request for a variance to permit the use of a duplex for use as a non-conforming triplex.

Staff Analysis – The owner of this property, Tracy Woodard, has requested that the house at 604 Ellen Drive be allowed to continue to be used as a non-conforming use for a triplex.

FACTS OF THE CASE:

1. The area is zoned R15, a district that permits duplexes. Triplexes (a three unit building) are not permitted.
2. There are a number of duplexes in the neighborhood as well as another triplex and a small apartment building, most of which were built before annexation by the city.
3. The subject property was constructed as a duplex, and the building permit was properly issued in November 1987.
4. Each side of the duplex had a basement garage.
5. On one side the original builder also built a spare room with a bathroom that was to be used in conjunction with the remainder of that living unit. This was permitted construction.
6. At some point in time that room was apparently converted into separate living quarters and rented to another occupant.
7. No building permit was issued, no inspections occurred, and no certificate of occupancy was issued.

Mosier asked for the owner's statement. Tracy Woodard was represented by Ken and Eleanor Woodard, her parents. They stated that she had purchased the house from the

Old Hickory Credit Union in 1991, and it was a triplex at the time. She was unaware of any problems with the triplex and had no knowledge that it was not a permitted use. An affidavit was presented of Mr. Jimmy Lawson, property manager of Old Hickory Credit Union in 1991 that affirmed that the property included three units upon foreclosure at that time and further that no alterations or modifications were made prior to the sale to Ms. Woodard and Brenda K Kennedy. Therefore, Mr. & Mrs. Woodard asked that the request be granted due to the fact that the triplex had been in existence for all of this time with no problems or notifications of any problems.

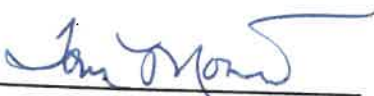
The board asked how the city became aware of the problem. Bennie Lane explained that he received a complaint from the tenants in one apartment and upon inspection at their request, found the third unit in the building. Subsequently, he notified the owner of the violation. This action led to the appeal before the board.

The board then asked for public comment. Ms. Carolyn Goff spoke and noted that she is the occupant of the subject apartment. She asked that the request be granted stating that she was very satisfied with the apartment unit, that it was an affordable rent for her since she has limited income and supports her mother who resides in a nursing home, and that it would place an extreme hardship upon her to have to go into the marketplace to find other housing. Mr. Tant Dowell of 602 Ellen Drive and Mr. Bryan Cowan of 520 Ellen Drive spoke in support of the owner and the tenant stating that the manner in which the property is now maintained is an asset to the neighborhood.

Board members discussed the problem of setting a precedent for other properties and questioned when the conversion occurred. Also discussed was the fire safety issue since the apartment had never been inspected. The board noted that they didn't think there was much discretion for a decision here due to the fact that a triplex is a prohibited use in the district. The board and Terry discussed the actual legal issue of the use having been established for such a period of time.

After further discussion and legal questions, Mike Cunningham moved that action on the request be deferred to seek legal advice from the city attorney and to request that the property owner and tenants allow the Codes Department to conduct an inspection to determine compliance with the Life Safety Code. Edgar Lowe seconded, and motion carried unanimously. Terry is to contact the city attorney, and Lane is to seek permission for the inspection.

Meeting adjourned.


Tom Mosier, Chairman