

City of Eau Claire

ZONING BOARD OF APPEALS

Meeting Minutes

August 6, 2019

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Eau Claire Public Library, Chippewa Room

7:00 p.m.

**Members Present:** Messrs. Beardsley, Boettcher & Canfield; Ms. Bourne & Brenholt

**Staff Present:** Messrs. Allen, Hoffer, & Noel; Ms. Schultz

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Chairperson Mr. Boettcher chaired the meeting.

**1. Roll Call**

Mr. Boettcher called the Zoning Board of Appeals to order.

**2. Approval of September 5, 2018 Meeting Minutes**

Mr. Canfield moved to approve the meeting minutes of September 5, 2018. Mr. Beardsley seconded and the minutes were approved.

**3. Election of Officers**

After discussion, Mr. Beardsley moved to elect Mr. Boettcher as chair, Mr. Nelson vice chair, and Ms. Brenholt as secretary. Seconded by Mr. Canfield and the motion carried.

**4. #1-19 333 Lincoln Avenue**

Mr. Noel presented an appeal challenging the Zoning Administrator's determination that a residential structure at 333 Lincoln Ave. is a one-family dwelling. The property owner, Zachary Zank, appealed the decision stating that there has been a two-family duplex operating since at least 1985, or before the zoning changed from R-2 to R-1. He argued it should be considered a non-conforming grandfathered use. In 2002 the City down-zoned the property and larger area from two-family (R-2) to one-family (R-1) per the Third Ward Neighborhood Plan.

The appellant provided two affidavits of support to demonstrate that the structure was operating as a duplex. One was from 1985 through 1990 by Mr. Todd R. Chapin and the second was from 2014 to 2018 by Rebecca Lynn Zank. Ms. Zank sold the property to her nephew, Zachary Zank, in June 2018. He has been living there and renting the structure to three unrelated tenants ever since. The City's definition of a dwelling unit states there can only be two persons other than related

family members living in the one unit. Thus, Mr. Zank is in violation with the extra person renting and illegally operating a duplex.

The burden is upon the property owner to prove by a preponderance of the evidence that a legal non-conforming use was in continual existence. With the 1990 to 2014 (24 years) gap in time, insufficient evidence has been provided to demonstrate continuous use over time. Building permits, property assessments, and County property tax records all show the structure has been classified as a single-family use. The 2002 rezoning also would have identified if the property was a duplex in the City staff's analysis. The owner at that time, Ms. Laurie Bieze, would have been notified of this rezoning and could have demonstrated then that the use was a duplex establishing the legal non-conforming status. This did not occur. In 1983 Ms. Bieze added onto the rear of the house creating additional living space and one room for a stained-glass studio. She also was known to rent to students.

Ms. Schultz, City Property Assessor II, stated the City was denied entry to evaluate the structure in 2015 and past assessment records from 1993 and 1995 show a single-family house evaluation. If the use was actually a duplex the owners have all been avoiding the proper taxation since a gross rent multiplier is associated with income generating properties. A 2014 Multiple Listing Service (MLS) from Edina Realty shows the property was marketed as a single-family listing and states the second kitchen could be converted back into the butler's pantry.

Dailey Johnson, attorney with Otto and Steiner Law and acting on behalf of Mr. Zank, stated the owner has a vested right to continue the duplex use at 333 Lincoln Ave. He asked three witnesses to speak. He also shared photos of the current use.

Todd R. Chapin, 115 Summit Ave., stated he lived across the street from the subject property and from 1985 to 1990 he observed Ms. Bieze using the structure as a duplex. He was never inside the house.

Rebecca Lynn Zank, 6460 South Shore Dr., Altoona, WI 54720 stated she bought the house in 2014 from the Ms. Bieze estate as a duplex and rented it that way. She did not live in it and sold it to her nephew, Zachary Zank, in 2018. She stated the house has two gas and electric meters and two postal addresses. She said the rear addition is connected by a breezeway and the floorplan is conducive for a duplex. The door between the two kitchens can be locked to create two units. She stated the neighborhood should be in favor of a rental that is owner-occupied.

Zachary Zank, 333 Lincoln Ave., stated he owns and lives in the house with three other non-student renters. He bought the house from his aunt with the understanding it was a duplex. This was a contributing factor in his decision to buy it with its income potential. There are six bedrooms, two furnaces, two separate laundry hook ups, one water meter and parking for five vehicles. The forced air serves the rear addition and a boiler serves the original 1871 house.

Mr. Boettcher opened the public hearing.

Dennis and Cathleen McGraw, 321 Lincoln Ave., stated Laurie Bieze did not have tenants after her sickness with cancer. They and other neighbors provided hospice care for her and during that time observed no renters for at least a year.

Kathleen Attermeier, 334 Garfield Ave., stated after Laurie Bieze's children moved out of the house, she started renting it to some art students. She was not against students renting but the added density. She said the house is a locally designated historic property. Around 2014 or 2015 the house was being used illegally as a duplex and work was being done without a building permit. Her daughter found a rental advertisement listing it with two kitchens. Thus, she called the City in complaint.

Mr. Noel confirmed that a letter was sent to Paul Zank from the City on November 26, 2014 by Code Compliance Inspector John Guettinger. It was reminding him to only rent to three-unrelated persons. A rental flyer and listing online specified "4 tenants @\$310 each per month".

Paul Zank, 13209 Olson Dr., Fall Creek, 54742 stated when he owned the property, improvements were cosmetic and did not need a building permit.

Kevin Rosenberg, 219 McKinley Ave. and President of the Third Ward Neighborhood Association, spoke against the appeal stating that the neighborhood plan does not allow duplexes on the property.

Krista Johnson, 330 Garfield Ave., stated the current owner and renters have been good neighbors but was concerned about losing single-family homes.

Mr. Boettcher shared a submitted email from Sharon Hildebrand at 426 Summit Ave. She strongly objected to the proposed duplex use due to it being inconsistent with the neighborhood plan. She stated Ms. Bieze did rent rooms out to people and also while she was ill.

Mr. Boettcher closed the public hearing.

Attorney Dailey Johnson spoke in defense and stated Ms. Hildebrand's email shows that the use was being used as a duplex while Ms. Bieze was ill. He stated that the owner lives in the dwelling and is a good neighbor to the area not causing any nuisances. As another option, they are also open to running the use for a year only if the City would allow.

Mr. Hoffer, Deputy City Attorney, stated the issue at hand before the board is the appeal and no other options. He asked Attorney Johnson how the use can be considered legal and non-conforming throughout the full time period in question.

Attorney Johnson stated the use was legal before the zoning was changed from R-2 to R-1. The 1983 building permit shows when it was changed into a duplex and the R-2 zoning allowed it then. The duplex experience of all three owners after 2002 shows it was being used as a duplex continuously.

Mr. Hoffer stated however that the 1993 property assessment indicted a single-family house and so did building permits. He explained that the use must not just meet zoning rules but other rules like building codes for duplexes.

Mr. Canfield stated the property having two of many features such two electric and gas meters does not prove the structure is a duplex. Lack of nuisances and being a good neighbor are positives but they do no warrant approval of the use. The use has not been in continuous standing from the testimony provided. The owners also have not been paying the correct taxes, if in fact it was a duplex.

Mr. Beardsley stated there is lack of sufficient evidence with the testimony provided on whether the residential structure was continuously used as a duplex. He cited the testimony by the appellant, past owners, the neighbors who have protested, and the examined factual record.

Mr. Beardsley moved to approve the City's decision to not grant duplex grandfathered rights to the property. The findings of fact show that the burden of proof to clearly show how the duplex was legally operating successively, and for no interruption of over one year, was inconclusive. No documents exist to fully support the claim or appeal. Mr. Canfield seconded and the motion carried unanimously.

#### 5. Adjournment

The meeting was adjourned at 8:26 p.m.

Mary Brenholt/aks  
Mary Brenholt, Secretary