

Board of Zoning Appeals
Minutes
July 11, 2017

I. Call to order

The regular meeting of the Board of Zoning Appeals was called to order on July 11, 2017 at 5:30 p.m. in the City Hall Conference Room, 1207 Palm Boulevard. Members present were Elizabeth Campsen, Pete Doherty and Arnold Karig; Carolyn Holscher and Glenn Thornburg were absent; also Secretary Douglas Kerr was present.

Mr. Kerr acknowledged that the meeting had been advertised in compliance with State law and the properties had been posted.

II. Approval of minutes

The next item on the agenda was the review of the minutes of the June 6, 2017 meeting. Mr. Doherty made a motion to approve the minutes and Ms. Campsen seconded the motion. The vote was unanimous in favor of the motion.

III. Appeals

Mr. Karig explained that the Board acted as a quasi-judicial body and all comments made were treated in the same manner as court testimony; therefore, any person who would like to speak to the Board should be sworn in. He then swore in all members of the audience that would be speaking.

3305 Cameron Boulevard

Mr. Kerr explained that the applicant was appealing a determination made by the zoning administrator concerning the type of occupancy allowed in a single-family residential zoning district at 3305 Cameron Boulevard. He explained that the property at 3305 Cameron Boulevard is located in the SR2, single-family zoning district and Section 5-4-32(2) established the uses allowed in the district which included a “detached, single-family dwelling” and “residential accessory uses” only. He added that Section 5-4-2(11) provided definitions of various type of dwellings and that the definition of a single-family dwelling was “a detached dwelling designed for or occupied exclusively by one (1) family unit and containing only one (1) kitchen.” He stated that Mr. Hunt was occupying one portion of the house and having transient guests occupy a separate portion of the house, which included a second kitchen, which he determined violated the single-family provisions of the zoning code.

Mr. Karig asked the applicant if he would like to present his case. The applicant, Mr. Andrew Hunt, stated that about one year ago he thoroughly researched the City’s ordinances to determine if he could do what he was contemplating and he determined that he could according to the ordinances he found. He explained that he went through the process of

securing a rental license and he read the rules on the application and determined that what he was interested in doing was permissible. He explained that he set up the necessary accommodations tax accounts and began renting the downstairs of the house. He stated that at this point, he was in full compliance with the ordinance. He explained that about a year after he started renting his house, a call came out of the blue from the Building Department ordering that he stop renting the house. He stated that prior to this call, he was in full compliance with the law and he had never been made aware that owner-occupied rentals would not be allowed.

He explained that at the time of his application there was no mention on the short-term rental application that owner-occupied rentals were not allowed, but now the application has been amended to include a provision explaining that owner-occupied rentals were not allowed. He stated that this action proves that the City acknowledges that an error had been made and the ordinances have been misinterpreted.

He added that the City has a legal precedent of allowing uses that legally existed prior to a change to continue after the change in law. He explained that when City Council lowered the occupancy allowed within short-term rentals, they allowed those rentals that were already operating to continue with the same occupancy they had prior to the change. He explained that his situation should be handled in the same manner.

He explained that he understood some people's concern about opening Pandora's box by allowing him to continue, but this would not be an issue because the application has been amended to clearly alert people to the prohibition of owner-occupied short-term rentals.

Mr. Karig asked if when he was researching the codes about owner-occupied short-term rentals if he called the City zoning office and asked if it would be legal to operate in this manner. He answered that he had not been able to ask these questions.

Ms. Campsen asked if he did have two kitchens in the house. Mr. Hunt answered that there was a refrigerator and a microwave, but that the house still had an interior stairwell that connects the downstairs to the upstairs.

He added that he brought his neighbor, John Wade, to the meeting to show that his neighbors support him and would rather have an owner staying at the house than a group of renters that have no respect for the neighborhood in the house. He stated that he also knew that he had the support of several City Council members including Jimmy Carroll and Jimmy Ward. He stated that additionally, the application had not made him aware of any zoning issues and he was completely unaware of any issues until after a year of renting the house.

Ms. Campsen explained that application forms cannot be confused with ordinances and that the forms in no way bind the City to a certain ordinance interpretation. Additionally, she stated

that if he had thoroughly reviewed the short-term rental provisions of the code, he should have seen Section 5-4-206 that states that all provisions of the code are cumulative, which should have alerted him to the fact that there are other codes regulating short-term rentals.

Mr. Hunt replied that when the City includes the written rules on the application, the reader assumes that those are the codes that must be adhered to. He explained that it would be like going to a pool with the rules posted and then being asked to leave for not adhering to a rule that was not posted on the sign of rules.

Ms. Campsen explained that she was sympathetic to his situation and the fact that he may not have fully understood the rules, but that could not be a consideration of the Board. The Board would have to read the rules and make a judgement on whether his situation complied with the zoning ordinance.

Mr. Hunt stated that in this particular situation, if the Board were to interpret the code as not allowing owner-occupied short-term rentals, this would go against the spirit of what City Council is trying to achieve.

Mr. Hunt stated that Council members have suggested that he should be given one year to satisfy all of his outstanding legal obligations. He asked if this was relief that the Board could consider granting him.

Mr. Karig explained that was not a matter the Board should be considering, they should only be considering whether the ordinance had been correctly interpreted.

Mr. Hunt's neighbor, Mr. John Wade, addressed the Board and stated that if the ordinance allowed fourteen unrelated people to stay at a house, why would the ordinance preclude the owner from being at the house at the same time.

Mr. Karig stated that he thought it would be useful to receive legal advice and Ms. Campsen made a motion to go into executive session to receive legal advice. Mr. Doherty seconded the motion and the vote was unanimous to go into executive session.

The Board came out of executive session and Mr. Karig explained that the Board received legal advice and no decisions had been made.

Mr. Karig stated that the issues that stuck out to him are that there are two families occupying the house at once and there are two kitchens in the house.

Mr. Hunt stated that he did not say there were two kitchens, but there was a microwave and a refrigerator.

Mr. Karig made a motion to uphold the zoning administrator's determination based on the facts that the property is located in a single-family residential district and Section 5-4-32(2) established that the property can only have one detached, single-family dwelling. Additionally, he added that Section 5-4-2(11) defined a single-family dwelling as a detached dwelling designed for or occupied exclusively by one family unit and containing only one kitchen. He stated that 3305 Cameron had a second kitchen and was being occupied by more than one family, as defined by Section 5-4-2(14), at a time. Mr. Doherty seconded the motion and the vote was unanimous in favor of the motion.

IV. Adjournment

With no other business, the meeting was adjourned at 6:20 PM.