



City of Harrisonburg

409 S Main Street
Harrisonburg, VA 22801

Meeting Minutes Board of Zoning Appeals

Gil Colman

Matthew Phillippi

Thomas Jenkins

Patrick Ressler

Glen Stoltzfus

Monday, December 2, 2019

4:00 PM

City Council Chambers

1. Call To Order

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, December 2, 2019, in order to consider the following request which was duly posted. Members present were Matthew Phillippi, Glen Stoltzfus, Thomas Jenkins, Dany Fleming, and Gil Colman. Also present were Rachel Drescher, Zoning Administrator, Frank Hopkins, Zoning Inspector, and Wesley Russ, Assistant City Attorney.

Present 5 - Gil Colman, Matthew Phillippi, Thomas Jenkins, Dany Fleming, and Glen Stoltzfus

2. Approval of Minutes

Mr. Phillippi called the meeting to order at 4:00 PM. The first item of business was the approval of minutes from the July and October meetings.

Mr. Fleming: I move to approve the July 22, 2018 and the October 7, 2019 meeting minutes.

Mr. Stoltzfus: I second.

Mr. Phillippi: All those in favor of approving the July 22, 2018 and the October 7, 2019 meeting minutes say "aye".

The Board unanimously approved the minutes.

A motion was made by Fleming, seconded by Stoltzfus, that this be approved. The motion carried by a voice vote.

July 22, 2019 Board of Zoning Appeals meeting

Click here to enter the action/summary (insert the summary from the memo here)

October 7, 2019 Board of Zoning Appeals meeting

Click here to enter the action/summary (insert the summary from the memo here)

3. New Business

Appeal Request 398 East Elizabeth Street

The first item of business is the appeal request for 398 East Elizabeth Street. Mr. Hopkins read the following request:

A request by Blind Squirrel Investments LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right in the R-2, Residential District and Section 10-3-20, Continuance of nonconforming use of building. The appeal is specific to the potential nonconformance of the occupancy. The property is located at 398 East Elizabeth Street and identified as tax map parcel 34-RR-11.

The property located at 398 East Elizabeth Street is zoned R-2, Residential District. An anonymous occupancy complaint was received by City staff and an inspection was conducted. The house was found to be rented to four individuals. Staff researched the past occupancy of the house and found the house was occupied by a couple, and then widower, from 1969 until 2008. The timeline of this ownership extends beyond the December 1998 date when the Zoning Ordinance was amended to restrict non-owner occupied dwellings in R-2 to a family plus one unrelated individual, which is the regulation today.

Property records indicate that Joseph and Fleta Shifflett owned the property until 2008 when it was sold to Brian Mayes. City staff contacted Mr. Mayes, who explained he rented the house to more than two unrelated persons until he was stopped by City zoning staff. Once Mr. Mayes learned that he could not rent to more than two unrelated individuals, he sold the property in 2016 to Buddy-Bob LLC, which is an LLC registered to Glenn Loucks. Mr. Loucks owned the house from 2016 until August of 2019 when it was sold to the current owner, Mr. Meyer. As Mr. Meyer states in his letter, Mr. Loucks rented the property 'consistently to four students' during his ownership and continues to serve as the property manager for the house. The property management advertisements show the house has the potential to be rented to five individuals, which is above what could be allowable even if the occupancy was nonconforming.

The property was never nonconforming to occupancy regulations because at the time of the Zoning Ordinance amendment in December 1998, the house was owner occupied by a family, which is in conformance with the current regulations.

It is staff's determination that 398 East Elizabeth Street is a single-family dwelling and shall conform to the current regulations of the R-2 District. The non-owner occupied dwelling shall be occupied by no more than a family and one unrelated person.

Chairman Phillippi asked if there any questions from the Board to staff regarding this request.

Mr. Colman: Was there any evidence presented by the applicant?

Mr. Hopkins: They did file a letter. In that letter, the owner stated that they had relied on the word of the prior owner, Mr. Loucks, as to the non-conforming status. Again, this sale took place over the summer. I was not contacted by anybody, and I do not think that Ms. Drescher was contacted by anybody as far as confirming that non-conformity.

Mr. Jenkins: You said that staff had no history of a prior zoning complaint from the previous owner, Brian Mayes?

Mr. Hopkins: I tried to find that violation letter. When I talked to him, he informed me of it. I looked through our records and did not find any evidence of that letter. I also

do not know why he would say that. I figured it must be our incomplete record. I would add that the proving of a non-conformity is on the owner to provide that evidence. We do have the ability to not have complete records, but I do not know what to say other than I took him at his word that he had been stopped by us at some point.

Chairman Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting at 4:05 PM. Chairman Phillippi informed those present that the BZA is a function of the Circuit Court. At that time, he swore in anyone wishing to speak regarding the request.

Jon Meyer, 11089 Soldiers Rest Lane, Marshall, Virginia, came forward to speak to the request.

Mr. Meyer: I did not know when I selected the LLC name of Blind Squirrel Investment that it fit this well. You did a solid job. I do not take argument with it. I am not here to fight City Hall. My issue will be with the seller misrepresentation and I will go down that path myself. I am not fighting with you and I do not want to have an argument. I bought this as an investment. We will see if it turns out to be a bad one. What I came to appeal is simply not to throw the students out, to let them get through their school year. It is not about revenue for me. It is about the fact that I gave them a place to live and now I am going to put them out on the street. That is my request. I am happy to end it early, as soon as school ends, as opposed to the lease, which goes through June. We could end it at the end of school. That is my goal and the reason that I am here.

Mr. Fleming: Have you talked with the students prior to the October 10th letter?

Mr. Meyer: Glenn Loucks, who sold the property and is managing the property, has told them that we have this appeal and is keeping them in the loop. We do not know the outcome. They are doing finals right now, so we are trying not to blow up their world.

Mr. Stoltzfus: It would be only two of them that would need to move.

Mr. Meyer: We have had that conversation. We have told them that. I do not know what they are doing. I think that they are not taking any action until they hear back. They want their due diligence. They are going to figure out what they are going to do.

Mr. Fleming: Based on what we have from staff, it certainly does not seem like there is much evidence to refute the staff finding.

Mr. Phillippi: Do you know if there are any arrangements being made for the students if they have to be displaced in the middle of the year?

Mr. Meyer: I do not. I think that they have taken action yet. I do not know.

Mr. Fleming: I think that there are requirements, once a ruling is made, of how much time they have to conform.

Mr. Phillippi: Is it thirty days?

Mr. Hopkins: I believe that is the case. We have worked with people in the past. I would hate to make that decision myself.

Mr. Colman: We dealt with an issue like this in the past.

Mr. Phillippi: We were told that we could not do much in that regard.

Mr. Colman: We had a similar situation. We had students pleading for sympathy. They got our

sympathy, but we could not make a decision in their favor.

Mr. Fleming: I do not know the current status of rental housing in Harrisonburg. Traditionally, it has been fairly fluid for students to be able to find housing, which does not mean it is not an inconvenience to do that. They are moving towards the end of the semester and there is a maximum of thirty days that could be offered, I think.

Mr. Phillippi: From this date.

Mr. Fleming: Presumably, they may have been doing some checking. Hopefully, doing some checking.

Mr. Phillippi: Hopefully, the property manager would have been doing some due diligence in trying to find a new place.

Mr. Colman: I recommend, this is for everybody, that any time you are buying property, check the zoning regulations.

Mr. Fleming: The staff here is very accommodating and work well with folks when they are looking to get questions answered and looking at property. You will find that if you want to continue working here, that is a good first stop.

Chair Phillippi asked if there was anyone else wishing to speak to the request.

Micah Jost, 382 East Elizabeth Street, came forward in opposition to the request.

Mr. Jost: I am a neighborhood resident. As a person who lives within earshot of the house and who sees the signs, I wanted to speak as a representative of the areas as to how this sort of renting can affect those of us who are homeowners and who hope to make that street our home for the long-term. It sounds like this is an open and shut case that does not require any further input. I want to share as the father of a small baby with special health needs, I appreciate not being kept up late at night by large numbers of people making a lot of noise. Enforcement of zoning code is very important for that reason. That said, I do not take any position on whether people have to be kicked out of their house at any particular time. I have nothing against the particular people who live there, in that regard. I really appreciate all your work and everybody diligently seeing that we are upholding basic quality of life for people in that area. Thank you.

Mehran Jafari, 398 East Elizabeth Street, came forward in support of the request.

Mr. Jafari: I wanted to get up here and talk about the student perspective. My friend and I live there with two other friends. I am a little nervous. The biggest issue, I think, I understand the zoning rules, Castle Property did not tell us about it within our lease. That is the biggest thing that bothers me and my roommate. We have to find a house during our break which make our break short. It was not said in the lease. Glenn never told us about the zoning laws. If we knew about the zoning laws, we would have not purchased the house. We would not have been in this situation. Another thing with the lease, and I have it here if anyone wants to see it, it was due to Castle Property's communication with us. It was not due to us destroying the house. We took care of the house. We cleaned it all of the time. It was a good house. It is a beautiful house. That is the biggest issue to me, that Glenn, the property manager, did not communicate the zoning law to us. We are forced to look for a house in such a short notice. It is the sympathy

card, but that is not what I meant to push out here. It is the fact that it is almost unfair that Glenn was able to do this. Maybe he did not know, maybe he did know. I talked to Matchbox, and she said that when you are a landlord, you know this stuff. This is not something that flies under the rug. They know this stuff. They tell you. They communicate it to the tenants and if we knew, we would not have purchased the house.

Mr. Phillippi: This is not the first situation like this that we have had come up. The unfortunate situation is that we have to sit here and handle just this aspect of it, just this appeal. There are, certainly, things within the law that can be done where, in your regard, if you feel aggrieved as a tenant, you can take that up with your property manager. There are systems in place like that. Unfortunately, we do not have any bearing on that. We cannot speak to that. We just have to handle this part of it. It is an unfortunate situation. It is sad that we do not have the authority and the ability to mediate that any further. There was a time that we tried very hard to solve a situation like that, but we were told that we were overstepping our authority, as a Board. It is sad, and we do sympathize with you. I would recommend a document called the Landlord Tenant Rights for Virginia or something like that. I would recommend researching and speaking with someone if you have any financial hardships due to this and using that document to work things out with the property manager.

Mr. Fleming: I do not know if it is the case at JMU if the housing services offer any support for that.

Mr. Phillippi: Off-Campus Life may be able to point you in the right direction, as well.

Mr. Fleming: Have you had, during your time there, any visits by the police?

Mr. Jafari: We had one get-together, which we registered with HPD. They did come because it was registered. When they get a noise complaint, they come and say shut it down. They did. After they came, we shut it down. It was under 100 guests, per HPD requirements.

Mr. Jenkins: I think we have compassion for this situation and you, as a renter. I do not know if it does fall on your responsibility. You are signing for four people and it should be legitimate. Especially, when there are other houses across the street and adjacent houses that have four or five.

Mr. Jafari: There is so much potential in Harrisonburg and I thought that this was the place, but they hid something in the lease.

Mr. Jenkins: I do not think that this responsibility falls on you, at all. Unfortunately, I think it does fall on the landlord and the management. They should know. I live close to you, right behind you. I have had no complaints, but that is not the issue here, unfortunately. You have been, overall, good neighbors and there have not been any issues. It falls on the landlord and the management, unfortunately.

Mr. Jafari: I had another question. Sorry for interrupting. This would not be reflected on me and my roommates' record if we did get kicked out?

Mr. Fleming: I do not think you are anywhere in the documents.

Chairman Phillippi asked if there was anyone else wishing to speak to the request. Hearing none,

he closed the public portion of the appeal and opened the matter for discussion.

Mr. Stoltzfus: I move to deny the request.

Mr. Colman: I second the motion.

Mr. Fleming: For the record, there no evidence suggesting that this has been a non-conforming use for any period of time.

Mr. Phillippi: It is unfortunate to me that... I wish we had an opportunity to speak with Brian or Glenn this evening, too. I am curious regarding some of the circumstances surrounding that and how it all worked out. Unfortunately, while we are a function of the Circuit Court, we do lack some of that authority to bring people in to talk about it. This is one of those situations where you question how things may have happened.

Mr. Fleming: For students, they do get caught in this. The remedy for that does not lie with this body. It is unfortunate that students, whether intentionally or not, get caught up in this. It is not reasonable to think that, at that age, they would be able to navigate the zoning conditions and laws that exist for the rental property. They put their trust in the management company, and I think it is reasonable to do that.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Colman: Aye; Mr. Jenkins: Aye; Mr. Fleming: Aye; Mr. Stoltzfus: Aye; Chairman Phillippi: Aye, and,

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 5-0 to deny the appeal for 398 East Elizabeth Street.

A request by Blind Squirrel Investments LLC for an appeal of an administrative decision regarding a violation of the Zoning Ordinance Section 10-3-39, Uses permitted by right in the R-2, Residential District and Section 10-3-20, Continuance of nonconforming use of building. The appeal is specific to the potential nonconformance of the occupancy. The property is located at 398 East Elizabeth Street and identified as tax map parcel 34 RR 11.

A motion was made by Mr. Stoltzfus to deny the request. Mr. Colman seconded the motion. The motion to deny the request passed (5-0).

Yes: 5 - Colman, Phillipi, Jenkins, Fleming and Stoltzfus

No: 0

Variance Request for 12 Holly Court

The first item of business is the appeal request for 398 East Elizabeth Street. Mr. Hopkins read the following request:

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house and found the house was occupied by a couple, and then widower, from 1969 until 2008. The timeline of this ownership extends beyond the December 1998 date when the Zoning Ordinance was amended to restrict non-owner occupied dwellings in R-2 to a family plus one unrelated individual, which is the regulation today.

Property records indicate that Joseph and Fleta Shifflett owned the property until 2008 when it was sold to Brian Mayes. City staff contacted Mr. Mayes, who explained he rented the house to more than two unrelated persons until he was stopped by City zoning staff. Once Mr. Mayes learned that he could not rent to more than two unrelated individuals, he sold the property in 2016 to Buddy-Bob LLC, which is an LLC registered to Glenn Loucks. Mr. Loucks owned the house from 2016 until August of 2019 when it was sold to the current owner, Mr. Meyer. As Mr. Meyer states in his letter, Mr. Loucks rented the property 'consistently to four students' during his ownership and continues to serve as the property manager for the house. The property management advertisements show the house has the potential to be rented to five individuals, which is above what could be allowable even if the occupancy was nonconforming.

The property was never nonconforming to occupancy regulations because at the time of the Zoning Ordinance amendment in December 1998, the house was owner occupied by a family, which is in conformance with the current regulations.

It is staff's determination that 398 East Elizabeth Street is a single-family dwelling and shall conform to the current regulations of the R-2 District. The non-owner occupied dwelling shall be occupied by no more than a family and one unrelated person.

Chairman Phillippi asked if there any questions from the Board to staff regarding this request.

Mr. Colman: Was there any evidence presented by the applicant?

Mr. Hopkins: They did file a letter. In that letter, the owner stated that they had relied on the word of the prior owner, Mr. Loucks, as to the non-conforming status. Again, this sale took place over the summer. I was not contacted by anybody, and I do not think that Ms. Drescher was contacted by anybody as far as confirming that non-conformity.

Mr. Jenkins: You said that staff had no history of a prior zoning complaint from the previous owner, Brian Mayes?

Mr. Hopkins: I tried to find that violation letter. When I talked to him, he informed me of it. I looked through our records and did not find any evidence of that letter. I also do not know why he would say that. I figured it must be our incomplete record. I would add that the proving of a non-conformity is on the owner to provide that evidence. We do have the ability to not have complete records, but I do not know what to say other than I took him at his word that he had been stopped by us at some point.

Chairman Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting at 4:05 PM. Chairman Phillippi informed those present that the BZA is a function of the Circuit Court. At that time, he swore in anyone wishing to speak regarding the request.

Jon Meyer, 11089 Soldiers Rest Lane, Marshall, Virginia, came forward to speak to the request.

Mr. Meyer: I did not know when I selected the LLC name of Blind Squirrel Investment that it fit this well. You did a solid job. I do not take argument with it. I am not here to

fight City Hall. My issue will be with the seller misrepresentation and I will go down that path myself. I am not fighting with you and I do not want to have an argument. I bought this as an investment. We will see if it turns out to be a bad one. What I came to appeal is simply not to throw the students out, to let them get through their school year. It is not about revenue for me. It is about the fact that I gave them a place to live and now I am going to put them out on the street. That is my request. I am happy to end it early, as soon as school ends, as opposed to the lease, which goes through June. We could end it at the end of school. That is my goal and the reason that I am here.

Mr. Fleming: Have you talked with the students prior to the October 10th letter?

Mr. Meyer: Glenn Loucks, who sold the property and is managing the property, has told them that we have this appeal and is keeping them in the loop. We do not know the outcome. They are doing finals right now, so we are trying not to blow up their world.

Mr. Stoltzfus: It would be only two of them that would need to move.

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Mr. Fleming: Based on what we have from staff, it certainly does not seem like there is much evidence to refute the staff finding.

Mr. Phillippi: Do you know if there are any arrangements being made for the students if they have to be displaced in the middle of the year?

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Mr. Phillippi: From this date.

Mr. Fleming: Presumably, they may have been doing some checking. Hopefully, doing some checking.

Mr. Phillippi: Hopefully, the property manager would have been doing some due diligence in trying to find a new place.

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Chair Phillippi asked if there was anyone else wishing to speak to the request.

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Mr. Jost: I am a neighborhood resident. As a person who lives within earshot of the house and who sees the signs, I wanted to speak as a representative of the areas as to how this sort of renting can affect those of us who are homeowners and who hope to make that street our home for the long-term. It sounds like this is an open and shut case that does not require any further input. I want to share as the father of a small baby with special health needs, I appreciate not being kept up late at night by large numbers of people making a lot of noise. Enforcement of zoning code is very important for that reason. That said, I do not take any position on whether people have to be kicked out of their house at any particular time. I have nothing against the particular people who live there, in that regard. I really appreciate all your work and everybody diligently seeing that we are upholding basic quality of life for people in that area. Thank you.

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Mr. Phillippi: This is not the first situation like this that we have had come up. The unfortunate situation is that we have to sit here and handle just this aspect of it, just this appeal. There are, certainly, things within the law that can be done where, in your regard, if you feel aggrieved as a tenant, you can take that up with your property manager. There are systems in place like that. Unfortunately, we do not have any bearing on that. We cannot speak to that. We just have to handle

this part of it. It is an unfortunate situation. It is sad that we do not have the authority and the ability to mediate that any further. There was a time that we tried very hard to solve a situation like that, but we were told that we were overstepping our authority, as a Board. It is sad, and we do sympathize with you. I would recommend a document called the Landlord Tenant Rights for Virginia or something like that. I would recommend researching and speaking with someone if you have any financial hardships due to this and using that document to work things out with the property manager.

Mr. Fleming: I do not know if it is the case at JMU if the housing services offer any support for that.

Mr. Phillippi: Off-Campus Life may be able to point you in the right direction, as well.

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Mr. Jenkins: I think we have compassion for this situation and you, as a renter. I do not know if it does fall on your responsibility. You are signing for four people and it should be legitimate. Especially, when there are other houses across the street and adjacent houses that have four or five.

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Mr. Jenkins: I do not think that this responsibility falls on you, at all. Unfortunately, I think it does fall on the landlord and the management. They should know. I live close to you, right behind you. I have had no complaints, but that is not the issue here, unfortunately. You have been, overall, good neighbors and there have not been any issues. It falls on the landlord and the management, unfortunately.

Mr. Jafari: I had another question. Sorry for interrupting. This would not be reflected on me and my roommates' record if we did get kicked out?

Mr. Fleming: I do not think you are anywhere in the documents.

Chairman Phillippi asked if there was anyone else wishing to speak to the request. Hearing none, he closed the public portion of the appeal and opened the matter for discussion.

Mr. Stoltzfus: I move to deny the request.

Mr. Colman: I second the motion.

Mr. Fleming: For the record, there no evidence suggesting that this has been a non-conforming use for any period of time.

Mr. Phillippi: It is unfortunate to me that... I wish we had an opportunity to speak with Brian or Glenn this evening, too. I am curious regarding some of the circumstances surrounding that and how it all worked out. Unfortunately, while we are a function of the Circuit Court, we do lack some of that authority to bring people in to talk about it. This is one of those situations where you question how things may have happened.

Mr. Fleming: For students, they do get caught in this. The remedy for that does not lie with this

body. It is unfortunate that students, whether intentionally or not, get caught up in this. It is not reasonable to think that, at that age, they would be able to navigate the zoning conditions and laws that exist for the rental property. They put their trust in the management company, and I think it is reasonable to do that.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Colman: Aye; Mr. Jenkins: Aye; Mr. Fleming: Aye; Mr. Stoltzfus: Aye; Chairman Phillippi: Aye, and,
BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 5-0 to deny the appeal for 398 East Elizabeth Street.

A request by Holly Court Enterprises LLC for a variance from Section 10-3-114(d) to allow an accessory structure to be constructed within the front yard and a variance of 30 feet from the required 30-foot front setback per Section 10-3-47, Area and dimensional regulations of the R-3, Multiple Family Residential District. If granted, a covered mailbox kiosk may be built zero feet from the property line adjoining Holly Court. The property is located at 12 Holly Court and identified as tax map parcel 14-O-1.

Yes: 4 - Colman, Jenkins, Fleming and Stoltzfus

No: 1 - Phillippi

4. Old Business

Ms. Drescher informed the Board that today is Frank Hopkins last day with the City of Harrisonburg. Mr. Hopkins has accepted the position of Zoning Administrator for the City of Winchester. The Board congratulated Mr. Hopkins on his new assignment.

Chairman Phillippi noted that Dany Fleming's term expires in February 2020. Since there is no meeting scheduled for January, today is Mr. Fleming's last meeting.

5. Adjournment

With no further business, the meeting adjourned at 4:49 PM.