

OAK RIDGE BOARD OF BUILDING AND HOUSING CODE APPEALS

MINUTES

DATE: September 13, 2012

LOCATION: Municipal Building Training Room

PRESIDING: John Russell

PRESENT: Joseph Lee, Amy Seiber, Philip Nipper, John Russell, Aaron Wells, Hugh Ward

PRESENT: City of Oak Ridge: Matt Widner and members of public

ABSENT: Dr. Bruce Leforce

Meeting Started 3:00pm - Ms. Amy Seiber took the Roll.

August, 2012 Minutes: motion to approve by Joseph Lee, seconded by Hugh Ward. Motion Passed

Hearing of Cases:

New Cases: no new cases.

Unfinished Business:

- a. Re-Hearing: **Case # 12-06** - 400 Tuskegee Drive, Oak Ridge, TN 37830; Legal Address- Map: 105C Group: B Ctrl Map: 105C Parcel: 005.00 PI: S/I: 000 Subdivision: BLOCK 0811 LOT 0530 (Owner: CLARY THOMAS ETAL & JEFF LEWIS (Lewis Electric Company) 399 WAREHOUSE ROAD OAK RIDGE 1N 37830 – Tabled from June, 2012 BBHCA meeting to allow for possible sale or other solution. Building still standing and unsold. Exterior grounds have been maintained. Complaint - Deteriorated exterior condition and exposed/open roof of the building structure violation of IPMC §§304.2, 304.4, 304.6, 304.7, 304.9; IPMC §305.3 Interior Surfaces – Ceiling/roof sheeting and rafters deteriorated and repeatedly exposed to moisture; IPMC §604.3 Electrical System Hazards – Open junction and outlet boxes; IPMC § 701 General Fire Safety – Building missing required number of extinguishers per storage occupancy codes. === Matt Widner introduced the case recognizing Jeff Lewis as being present and provided background leading up to the case being heard. Mr. Widner verified that a partial interior inspection was conducted instead of a full building interior as ordered by the BBHCA. Reporting that about only 45% interior was actually inspected. Mr. Widner offered that the building as whole is not structurally unsound based on the interior inspection and began to discuss specific interior issues found in addition to the already know exterior problems. Displaying photos, Mr. Widner pointed out visible property maintenance issues of the interior areas inspected with the Fire Department and Mr. Lewis on 6 September 2012. Mr. Widner could not conclude from the interior inspection that fire loading inside the building constituted a significant fire risk. He summarized overall condition of the building is in fact Unfit for Human Occupation and Use citing ORPMC §13-205 and continues to be an unsightly nuisance which generates complaints. Mr. Widner requested the building be ordered demolished within a given time frame because the owners have clearly stated that they have no intention to make any improvements on a building that they fully expect to sell or demolish at some point in the future. Having the opportunity to speak, Jeff Lewis verified Mr. Widner's statements and offered that the only active use of the entire building is the lawn mowing company. Making reference to the Occupation and Use, Mr. Lewis declared the building is used but actual occupation on a routine basis is not typical. Mr. Widner inquired if Mr. Clarey is using another portion of the building to store vehicles. Mr. Lewis confirmed yes. Aaron Wells

asked Mr. Lewis about photos specifically those indicating the condition of the sub-roof under the tin which Mr. Lewis stated it is the same condition today as it was when they bought the building several years ago. Mr. Wells finished questions by phrasing all areas of the roof was covered with the tin which does allow minimal leakage in its current condition. Mr. Lewis confirmed that Mr. Wells statement. Mr. Widner could not confirm that all roof area is covered with tin and recognized past storm damage where significant amounts of tin blew off the back side of the building. Mr. Widner further stated that the interior inspection did not include the back spaces of the building. John Russell asked Mr. Lewis what he plans to do with the building. Mr. Lewis responded that he had a possible sale which also included other surrounding properties. He elaborated on the details on prospective buyers and continued that his intention was to demolish the building and keep the slab for a future building for the prospective new tenants within the year. Other than that, it is still for sale. Mr. Wells commented that he was a little disturbed that staff would ask the BBHCA to declare the building unfit and demolish given that Mr. Widner said that it is not structurally unsound and only cited a few interior issues. Mr. Wells continued that the riding stables and 84-Lumber building worse than this building from the outside. Mr. Wells suggested that there are no legal grounds to order the building unfit or demolished. Joe Lee asked Mr. Widner if he knew where the complaints were being generated from. Mr. Widner could not specify who and where complaints were from but did confirm at least 10 have been received which one came from the City Manager's office. Mr. Widner continued by clarifying that unfit for human occupation and use does not solely depend on whether a building is structurally unsound and read the code sections that provides legal grounds for the BBHCA to declare it as such and pointed out this building is a source of continued nuisance complaints concluding that he is only asking for an order based on the code and deferring the decision to the BBHCA as it is charged to do. Philip Nipper confirmed with Mr. Lewis that the ultimate plan was to demolish the building and there is no future plan to keep any portion of the building. Mr. Nipper asked how long the current owners have had control of this building. Mr. Lewis said twenty years or so. Mr. Nipper asked if during that twenty years, has the owners done any improvements on the building. Mr. Lewis said besides adding interior partitions, there have been no improvements. Mr. Wells made a motion that all cited violations be fix/repaired. John Russell asked for a second. Hugh Ward stated he has personal/financial dealing with Mr. Lewis and he knows Mr. Clarey personally recuse himself from the vote. Mr. Russell, Mr. Nipper, and Mr. Lee all confirmed they know Mr. Lewis personally. Mr. Nipper stated that he doesn't feel his personal association with Mr. ^{Lewis} Lee would interfere with the business at hand. Mr. Lee summarized that the building has sat untouched for twenty years and said that he feels the improvement of the external appearance is needed and asked Mr. Lewis if there was any interest in painting the building and making improvements to the appearance. Mr. Lewis said that is not out of the question and will do it if ordered. He continued that it doesn't make economic sense to demo the building or do any significant improvements when there are no immediate plans and confirmed if painted is required he would. Mr. Lee asked about the roof tin that is known to be missing. Mr. Lewis confirmed that roof tin is missing but offered there some areas covered with old tin. Mr. Lee partially agreed with Mr. Wells's motion and asked if owners had any estimates to put a metal building in place. Mr. Lewis confirmed that it would take a couple hundred thousand dollars. Mr. Lee said his hesitation was that the board is to there to address distressed property and he feels this is in-fact a problem. He asked Mr. Lewis where we go from here. Should we just wait another twenty years before something is done? Mr. Lewis said no, that they want to do something but just not immediately. Mr. Lee asked if there is any foreseen use for the building. Mr. Lewis said that only the foundation slab. Mr. Russell asked if the foundation slab was sound. Mr. Lewis said it was very much so. Mr. Nipper stated the dilemma here is that the City has a building which is an obvious eye-sore but the owners don't want to sink good money into bad to fix code issues on a building that is supposed to be torn down. He continued that if he was in the place of ownership that he would not do it and concluded his action would be to go ahead and tear it down so that it is more marketable. Mr. Wells commented that owners would have to pay to tear it down now and for a possible gain of sale. Everyone agreed that is a dilemma. Mr. Nipper reminded everyone that he cannot speak solely on behalf of ownership but also the citizen whom he concluded was even more important. Mr. Lewis made reference to the adjacent properties conditions and stated that he has a little heartburn about being singled out. Mr. Widner stated that he has absolutely no personal agenda against Mr. Lewis and respects

his business contributions to the City but pointed out that when this case was originally presented that the adjacent properties were not being ignored but merely delayed depending on the outcome of this case because the nuisance abatement budget of the city will not cover all three properties if forced to take action. Mr. Widner said that his actions on this property is a result of which property generates the most complaints and cited a "worse first" approach to enforcement. Mr. Widner asked Mr. Lewis not to take this personally. Mr. Wells asked Mr. Widner if there were any other code issues beside the minor interior items listed. Mr. Widner confirmed that there are several exterior items in addition to the interior. He continued that structurally speaking there doesn't appear to be an immediate threat, but there are in fact pieces and parts of the building are falling off regularly. Mr. Russell commented that a motion needed to be made. Mr. Lee made a motion that the property is unfit for human occupation and use under city code and ordered demolished. Mr. Russell asked if that is something we already passed. Mr. Widner stated that there has been no action by the BBHCA other than tabling the case for sixty days. Mr. Nipper verified the table. Mr. Russell asked for a Second. Being no second, motion failed. Mr. Wells made motion to dismiss the case. Mr. Russell called for second. Being no second, motion failed. Mr. Nipper made a motion that the property be repaired in accordance to known minimum code violation and also that the exterior building repaired be painted. Mr. Lee seconded the motion. Mr. Wells questioned Mr Ward if the BBHCA had authority to order the building painted? Mr. Nipper confirmed there is a minimum code for building exterior protective coating. Mr. Wells said that the violations of exterior were not noted and that the building was painted several years ago. Mr. Ward reminded the board he has recused himself and he didn't know the answer followed by a statement that he is not legal counsel for the board. Mr. Nipper pointed out that is a section that addresses the exterior condition does include paint if need be. Mr. Widner commented that staff is presenting what can be done to address known code violations and reminded board that it is the board to decide the outcome. Mr. Nipper asked to amend his original motion that ownership should either make all know code repairs or demolish the building within 90 days. Mr. Lee clarified motion details and seconded the amendment. Mr. Lee continued that the city has a problem of blight and this is not an isolated case. He continued that everybody knows Mr. Lewis and has no issues with him personally but something has to be done with properties like this. If the BBHCA continues to allow building to deteriorate without being addressed then the residents and value will be devalued. Mr. Wells pointed out the Mr. Lee needs to only discuss the case and not his general view. Mr. Lee said his is talking about this case because if we let this go, then it will be used as owner grounds for future nuisance cases to be ruled on. Mr. Russell pointed out that other interior violations would not reduce complaints of the exterior building. Mr. Lewis commented that he is from Oak Ridge and he is business man and asked the BBHCA for 90 additional days to 6 months for any ruling. Mr. Russell questioned if we could actually delay an order beyond 90 days. Mr. Widner commented that as long as the BBHCA takes no enforcement action, the code doesn't limit the number or length of time a case can be table. He provided past history on cases that had been repeated tabled. Mr. Russell made motion to table this case. Mr. Wells noted that there was a seconded amended motion was still on the floor and that the BBHCA needed to vote on the amendment first. Mr. Nipper re-stated his motion and amendment. Mr. Wells in further discussion said if this fails, he would make a follow up motion to table this case for 90 days. BBHCA procedural discussion allowed Mr. Wells to make a motion to table the motion on the floor. Mr. Russell attempted to clarify that if this motion to table passes, it would table Mr. Nippers motion with a second for 90 days. Mr. Wells tabled motion was seconded by Amy Seiber. Mr. Russell called the question. Mr. Russell, Mr. Nipper and Mr. Lee voted "NO" – Mr. Wells and Ms. Seiber voted "YES" to table for 90 days. Motion failed. Mr. Russell called the question for Mr. Nipper amended motion. Mr. Russell, Mr. Wells and Ms. Sieber voted "NO" and Mr. Nipper and Mr. Lee voted "YES" to order repairs or demolish in 90 days. Motion failed. Mr. Wells made a motion to table the case for 90 days, seconded by Ms. Sieber. Mr. Russell called question. Mr. Nipper, Mr. Lee, Mr. Russell voted "NO" and Mr. Wells and Ms. Sieber voted "YES" to table case for 90 days. Motion failed. Mr. Wells commented that given there has been 3 votes for action all of which failed that the BBHCA must table the decision for 30 days till the next meeting. Mr. Nipper made a motion that ownership be allowed 30 more days or until October, 2012 meeting to present a remediation or demolition plan to the BBHCA so a decision could be made then. Seconded by Mr. Lee. Mr. Wells discussion asked if Mr. Lewis

was required to attend next month's meeting if he only needed to submit on paper the plan. Mr. Nipper acknowledged he could but if Mr. Lewis isn't here to represent himself, he might not like the results. Mr. Russell called for question. Motion passed unanimously. Mr. Lewis clarified what just took place and asked if he would get a notice for the next hearing. Mr. Widner confirmed there will be a notice and that this is just the second time Mr. Lewis has actually attended the meeting for this case.

New Business:

At the August, 2012 BBHCA meeting, Mr. Nipper distributed to all board members a copy of the last set of board rules that were enacted in 1997. He asked board members to review the BBHCA rules and procedures so that a discussion can take place in September, 2012 meeting about current practice versus actual rules of conducting a meeting. He posed the question to the BBHCA, if they felt there was a perceived need to modify or update them reflecting how the current members want to operate because things have changed in 15 years.

Mr. Nipper pointed out that the BBHCA agenda has for a long time put the Hearing of New Cases ahead of Unfinished Business. He commented that even though this makes sense for public consideration, it needs to be reflected in the actual rules.

Mr. Nipper pointed out that current rules and procedures focus on building/construction codes for appeals or modifications. He continued that the rules do not address the BBHCA function of hearing appeals of Unfit for Human Occupation and Use – He used case# 12-06 as an example.

Mr. Nipper suggested that the BBHCA should decide if they want to leave the rules in place or make needed changes to reflect current functions of the board. He concluded that at the very least, there some be some rules change/addition to address notice and orders of blighted properties.

Mr. Widner apologized on behalf of Community Development for any practice that didn't follow the BBHCA's rules in previous years and took the position that he followed an agenda format as given to him that has been used for several years. Mr. Widner affirmed he would follow rules as they currently are or how they will be when changed by the current BBHCA members. He offered a brief explanation of how public comment section was added to the September, 2012 meeting.

Mr. Russell commented that the reason Hearing Of New Cases was moved up is because there were usually citizens at the meeting for those cases so it made sense for consideration purposes of the citizen time so they don't have to sit through possible lengthy Unfinished Business.

Mr. Nipper agreed and followed up that he sees other boards putting new cases ahead of unfinished business and suggested the BBHCA officially do the same. Posing the question, Mr. Nipper asked if amendments to the rules should be done at the next scheduled meeting which only needs an affirmative vote of 4 to change the rules.

Mr. Russell suggested that instead of voting on just amendments, it makes sense to simply re-write the rules and vote on the new version of them. Any changes could be made to the proposed rules in effort to make it faster.

Mr. Lee made motion that Mr. Widner review the current rules with city manager and city attorney and come back with a revised set of rules.

Mr. Russell commented that the board should provide desired direction to Mr. Widner before having him work on the rules amendment(s)

Mr. Lee recognized Mr. Nipper's diligence and asked if it was even necessary for the city manager or city attorney to review proposed rules.

Mr. Nipper reviewed his effort and identified specific articles that should be changed (current article five moves to six and a new article five is actually the notice and orders for blight property).

Mr. Lee rescinded his motion.

Mr. Nipper made motion to go ahead and incorporate discussed changes into a new proposed rules document and have them looked at by city staff and be ready for discussion and possible action at the October, 2012 BBHCA meeting. Seconded by Mr. Ward. Mr. Russell called discussion and question. Motion passed unanimously.

Public Comment

Mr. Nipper questioned if a visitor sign is needed and said that he has not seen it before and is not aware of what purpose that serves.

Mr. Ward confirmed that he has seen and signed into as a visitor at other City Board meetings.

Citizen – Trygie Myhre commented that he has seen the sign-in actually be part of the minutes of that meeting.

Mr. Nipper continued that he sees no need of nor does he like just putting the visitor sign in without being part of the actual board rules.

Mr. Wells suggested the visitor sign in is similar to Gestapo tactics

Mr. Widner offered explanation that the Public Comment was added per direction to be consistent with other open to the public boards. He also continued that the actual visitor sign in is not intended to be mandatory but simply a tool to keep track for the purposes of record of citizens that wish to be recognized and/or speak. Not having this tool in the past has been somewhat burdensome trying to compose accurate complete minutes of that meeting.

Mr. Nipper followed up by saying unless it is in the rules it should not be part of the rules.

Mr. Lee recognized the intended purpose of having a visitor sign-in.

Mr. Russell commented that he didn't see the visitor sign-in as something that even needed to be on an agenda but merely a resource of the board.

Mr. Widner re-affirmed he will follow the desire of the board and that of the city manager to find a reasonable solution. He continued that since the decision was to review the rules anyway, this would be an opportune time to address public comment and visitor sign-in.

Mr. Lee commented on his support for the visitor sign in using other city boards and commissions as an example that used for knowing who is in the meetings and participated.

Mr. Russell ended discussion – moving on to next item.

Miscellaneous Business and Communications:

Mr. Widner referred BBHCA members to the updated case summary and commented on two cases.

130 N. Jefferson Circle – City no longer going to purchase and now is moving on with Nuisance Abatement

122 Jarrett Ln – City no longer going to purchase and now is moving on with Nuisance Abatement (noting a \$113,000 TennCare Lien that needs to be resolved before city demolition effort.

Mr. Widner gave a brief summary of code adoption status.

Mr. Lee provided Applewood Appartments recent court hearing and Mr. Levits primary argument not relating to the actual case but the process.

Mr. Ward commented it will take about two months to learn of court's decision

Mr. Russell and Mr. Lee discussed the possibility of appeal.

John Russell, being no further business....

Meeting adjourned at 4:30 p.m.



Amy Seiber
Secretary