

Present: Chairperson Tillman; Vice-Chairperson Crossen Members: Bugenski, Crawford, Gatowski, Jawad, Maxwell, Mitchell, and Oen; Alternate: Keller

Absent: Alternate: Gennari

Also Present: Planning and Zoning Administrator, LaPere
Village Clerk/Assistant Manager, Rutkowski
Council Liaison, George

Tillman called the regular Zoning Board of Appeals meeting to order at 7:30 p.m. via Zoom, per Executive Order 2020-154.

ELECTION OF CHAIRPERSON

Since the current Chairperson is no longer a member of the Board, the current Vice-Chairperson conducted the nominations process.

Motion by Crawford, second by Gatowski, to elect Michele Tillman as the Chairperson of the Zoning Board of Appeals.

Roll Call Vote:
Motion passed (9-0)

ELECTION OF VICE-CHAIRPERSON

Chairperson Tillman called for nominations for Vice-Chairperson of the Board.

Motion by Maxwell, second by Tillman, to elect Chris Crossen as the Vice-Chairperson of the Zoning Board of Appeals.

Roll Call Vote:
Motion passed (9-0)

REVIEW AND CONSIDER APPROVAL OF MINUTES OF A REGULAR ZONING BOARD MEETING HELD JUNE 8, 2020

Motion by Oen, second by Crossen, that the minutes of a regular Zoning Board of Appeals meeting held June 8, 2020 are approved as submitted.

Roll Call Vote:
Motion passed (9-0)

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

CASE NO. 1378

Petitioner: Abraham and Amy Robertson
Property: 19107 W. Chelton

Interpretation Requested:
Section 22.04 Definitions

Family, Either:

- a. One or more persons related by blood, adoption or marriage, living and cooking together as a single nonprofit housekeeping unit, inclusive of household servants, or
- b. Two (2) to six (6) persons living and cooking together as a single non-profit housekeeping unit having a continuing nontransient domestic character though not related by blood, adoption or marriage. This definition shall not include any society, club, coterie or organization which is not a recognized religious order nor does it include any group of individuals whose association is temporary or seasonal or similar to a resort, boarding house, motel, hotel, or whose association is for an anticipated limited duration or for a determinable period such as a school term or terms. {Ord. 252, 5-12-91 }

Dwelling unit: One or more rooms with a bathroom and a single kitchen designed as a unit for occupancy by only one family for cooking, living and sleeping purposes. (see "Family")

Dwelling, Multiple-Family: A building, or a portion thereof, designed exclusively for occupancy by two (2) or more families living independently of each other.

Appeal Requested:

Village Administration declined the request by the petitioner for a rental license to lease a portion of the residence pursuant to Chapter 44, Section 44.05, (A) which requires the property and structures to be fully compliant with Village Ordinances. This property is in Zone District R-1, Single Family Residential and Administration has determined the proposed use would result in a multifamily dwelling and is not an allowable use in this Zone District.

LaPere provided an overview of the request. The petitioners, Abraham and Amy Robertson, 19107 W. Chelton, are requesting an interpretation of text of the Zoning Ordinance and an appeal of an administrative decision to decline to issue a landlord license to lease a portion of their existing residence. The petition form and supplemental documentation submitted by the petitioner and correspondence received by the Village regarding this case were provided for the Board's review.

The Village received complaints on July 2nd that the petitioners were advertising a portion of their home for rent as a duplex apartment. A letter was sent to the petitioners informing them that this was not an allowable use and that rental of residential properties required a landlord's license per Village ordinances. This notice requested the petitioners cease advertisement of the rental, and not proceed with occupancy by a second family. A copy of the letter and screen shots of the advertisement were provided to the Board.

The petitioner, Abraham, contacted the Village upon receipt and relayed that they had understood this was an allowable use based upon information from their realtor when purchasing the property. The Village reviewed its records for this property and discussed the matter with the Village Attorney who concurred that this would not be an allowable use. The petitioner was informed that a landlord's license could not be issued, and that they could seek relief from the Zoning Board of Appeals if they felt this decision was made in error.

Interpretation of the language of the ordinance should be made by the plain language in the text, as well as consideration for the intent based upon the adopted Zoning Ordinance and Master Plan, and intent found in records of the deliberation by the adopting body. The allowable uses in the Single Family Zone District are found in Chapter 22, Section 22.14 which lists single family

detached dwellings as a principal permitted use. Further, Section 22.14.010 Statement of Purpose states:

The single-family residential districts are established as districts in which the principal use of land is for single-family dwellings, but with each district having different minimum lot sizes to encourage differing development character and densities. For these residential districts, in promoting the general purpose of this Section, the specific intent of this section is: a. To permit the construction of, and the continued use of the land for single-family dwellings; and b. To prohibit business, commercial or industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings in the district.

Below is the language from Chapter 22, Section 22.04 Definitions.

Family, Either:

a. One or more persons related by blood, adoption or marriage, living and cooking together as a single nonprofit housekeeping unit, inclusive of household servants, or

b. Two (2) to six (6) persons living and cooking together as a single non-profit housekeeping unit having a continuing nontransient domestic character though not related by blood, adoption or marriage. This definition shall not include any society, club, coterie or organization which is not a recognized religious order nor does it include any group of individuals whose association is temporary or seasonal or similar to a resort, boarding house, motel, hotel, or whose association is for an anticipated limited duration or for a determinable period such as a school term or terms. {Ord. 252, 5-12-91 }

Dwelling unit: One or more rooms with a bathroom and a single kitchen designed as a unit for occupancy by only one family for cooking, living and sleeping purposes. (see "Family")

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The petitioner has stated there is an interior door that will remain locked for the duration of occupancy and the rental family will live independent of their family. Given this information, along with the language of the Zoning Ordinance, the Village has interpreted the proposed use as multiple family per our definitions. If the petitioner would like to use this property as a multiple-family dwelling, they may request the property be rezoned to the R-M Zone District. That process would require Village Council approval and the petitioner would have to demonstrate how the proposal meets all the standards for approval including consistency with the Village Master Plan which shows future land use of single family residential for this area.

The area of the home to be used by the second family was an addition that was constructed in 1992- 1993 and approved by the Village. Per the submitted plan descriptions for the space, it is clear that it was intended as an expansion of the home itself, and included a kitchen, bath, and other living space. In 2019, the owners at that time renovated the interior of the entire home as the property had been vacant for a number of years. The renovations included the area being proposed for rent, which was referred to as a mother-in-law suite on the scope of work submitted. Under the Village's definition of family, a relative could occupy this space provided the persons maintained the entirety of the home as a single housekeeping unit. Finally, the Village has no record of this property ever being used in a manner inconsistent with a single family use.

LaPere answered questions from members of the Board.

Tillman referred to the Zoning Map showing that there are not any multi-family dwellings in the single-family residential zone.

Bugenski clarified that the issue before the Board was an interpretation of the ordinance; not a variance request.

Tillman clarified that in addition to the interpretation request, the Board must also decide whether or not to uphold administration's decision to deny the petitioner a landlord's license.

Gatowski and LaPere commented on the ramifications of the Board's interpretation of the ordinance.

Abraham Robertson provided an overview of the situation and the reasons for the appeal. Namely, the Robertson family would like to obtain a rental license to rent out a portion of their residence. Robertson spoke on the miscommunication between the realtor and the Village prior to the purchase of the house regarding the ability to rent. He explained that it is his sister-in-law's intention move into the home in the future because she has Cerebral Palsy and will need a caregiver, so the rental license would be temporary. He expressed that the family will face a significant financial hardship if they are unable to receive income from the proposed rental unit. He recognized the concern that the interpretation of the text for his case would have to apply to future cases, but did not think this request would have a negative impact on the district. Robertson argued that the definitions in the ordinance were ambiguous when applied to his specific property. Abraham argued approval of his request would not substantially interfere with the continuation of single-family dwellings in the district. He thanked his neighbors for their support on this issue.

Abraham and Amy Robertson answered questions from the Board.

Robertson clarified that the only overlap or shared spaced between his family and renters would be the garage.

Tillman and LaPere clarified that it is not uncommon for single-family homes in Beverly Hills to have more than one kitchen.

The following people submitted written comments in support of the appeal:

Lee and Lillian Schostak, 31341 Pickwick Lane; Alison Wilker, 31320 Churchill Drive; April Swick, 18572 E. Chelton; Sue LaRue, 18674 E. Chelton; Kellie and Josh Martens, 18760 Walmer Lane; Michael and Hannah Reinker, 31151 Downing Place.

The following people submitted written comments in opposition to the appeal:

Tim Luke, 31700 Nixon; Vince and Lynn Borowski, 19070 Chelton; Nancy Rademacher, 18786 Chelton; Tim and Nancy McIntyre, 19124 Chelton.

David Miller, 31337 Downing Place asked if the Board's decision would stay with the property and create opportunities to have multiple renters at the residence.

The following people were in attendance and spoke in support of the appeal:

Christine Fentress-Gannon, 19100 Chelton; April Swick, 18572 E. Chelton

The following people were in attendance and spoke in opposition of the appeal:

Chris Doozan and Beata Lamparski, 31326 Downing Place; Dick Maxwell, 18701 Waltham Lane; Brian Fix, 31134 W. Chelton; Stacie Millichamp, 18630 E. Chelton; Devin McIntyre, 19124 Chelton;

Donna Selenich, 31264 Pickwick Lane, expressed her concerns if this property were to become a long term rental.

Gatowski expressed concern that the Board’s interpretation of the language on this property would set a precedent for other R-1 properties and does not want to see new development take advantage of this interpretation.

Crawford was moved by the Robertson’s story, however ultimately agrees with administration’s interpretation of the definitions.

Motion by Crossen, second by Oen, the Zoning Board of Appeals affirms the determination by the Village Zoning Administrator that the definition of family precludes the occupancy of a portion of the home at 19107 W. Chelton by an additional person or persons who will live independently of the property owner and affirms the denial of the landlord license consistent with the requirements of Chapter 44, Section 44.05, A.

Roll call vote:

Motion passed (9-0)

PUBLIC COMMENTS

None.

LIAISON COMMENTS

George thanked the Board for their diligence on the matter before them. He welcomed Bugenski to the Board. He thanked outgoing member Raeder for his time and work serving on the Board.

ADMINISTRATION COMMENTS

LaPere commented that she will follow up with the Robertsons to see if they plan to pursue a use variance. The next meeting is scheduled for September 14, 2020.

ZONING BOARD COMMENTS

Oen wished everyone well. He welcome Bugenski to the Board. He asked everyone to stay safe, wear a mask, and wash their hands. He thanked Tillman for taking on the role of Chairperson.

Tillman thanked Mr. Raeder for his contributions to the Village. She welcomed Bugenski.

Motion by Crossen, second by Oen, to adjourn the meeting at 9:13 p.m.

Motion passed.

Michele Tillman
Chairperson

Kristin Rutkowski
Village Clerk