

PUBLIC HEARING
BOARD OF ZONING APPEALS
December 10, 2015

The Austintown Township Board of Appeals held a Public Hearing on Thursday, December 10, 2015, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of the following case:

APPEAL CASE 2015-21-A-Murphy-Oesch.

The following Board members were in attendance:

Mr. Robert Satterlee – Chairman
Mr. Michael Beaudis – Vice-Chairman
Mr. William Glaros
Mr. Dale Basista
Mr. Joe Koch
Mr. James Mahoney - Absent

Chairman Satterlee opened the public hearing at 7:00 P.M. The following testimony was given under oath or affirmation. Court Reporter in attendance, complete transcript taken of the hearing.

Motion by Mr. Glaros to approve the minutes of public hearings held on April 2, 2015 and April 30, 2015.

Seconded by Mr. Beaudis.

Roll Call Vote: Mr. Koch – Yes; Mr. Basista – Yes; Mr. Glaros – Yes; Mr. Beaudis – Yes; and Mr. Satterlee – Yes.

APPEAL CASE 2015-21-A

Attorney Scott R. Cochran, 19 East Front Street, Suite 1, Youngstown, Ohio, 44503, on behalf of Patricia Murphy-Oesch, 6390 Fairview Road, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and requests a variance from the terms of Article I-Definitions: Dwelling-Single-Family, Two-Family, and Multi-Family, Article III-Non-Conformities, Section 301-Continuance of Non-Conforming Uses, Paragraph 5, Article VI-Residence R-1 District, Section 601-Permitted Uses, Paragraph 2, and Article XVII-Supplementary District Regulations, Section 1705-Conversion of Dwellings to More Units, of the Austintown Township Zoning Ordinance, as amended through November 25, 2014, to allow for an existing three-plex multi-unit dwelling to remain at the property located at 4688 New Road with no approved conversion plan or recognition of a non-conformity on file with the zoning office. Only one (1) single family dwelling with an attached private garage and/or one (1) detached

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private garage, and accessory buildings, exclusive of trailers or house trailers are permitted on a single platted lot. Said property is zoned as Residence R-1 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Crivelli read the applicant's letter dated November 17, 2015 into the case record, referenced nine pages of color photographs of the property, two pages of hand drawn floor plans, two pages of numbered satellite photographs, three pages of pictures of multi-plex buildings corresponding to the two satellite photographs, an interior floor plan, the case mailing list and three plat maps prepared by the zoning office.

Also referenced by Zoning Inspector Crivelli was a letter of violation dated June 18, 2015 with an accompanying May 29, 1985 letter of violation issued by the previous zoning inspector and four pages of attached documents, a building permit dated August 6, 2008 for work to be done to a single-family dwelling, Mahoning County Auditor's Reports for 2007 and 2008 depicting the structure being taxed as a single-family dwelling, a Mahoning County Auditor's Report for 2009 depicting the structure being taxed as a three-plex, a certified letter return, a title search of the property, nine pages of APD reports for recent calls to the property, and six pages of additional case documents.

A letter of opposition authored by Mary Volinchak was read into the case record.

Mr. Satterlee stated the mailing list for case 2015-21-A will be incorporated into the case record.

Attorney Scott R. Cochran, 19 East Front Street, Suite 1, Youngstown, Ohio, 44503, stated the request is being amended to allow conversion to a duplex as it would not be economically feasible to convert to a single-family dwelling. Attorney Cochran referenced Exhibit D as floor plans where the gray area is the utility room with separate utilities for the three units. The front unit is to the left, separate utilities for the back and apartment upstairs. Mr. Satterlee inquired about the upstairs unit. The amended request would have two units downstairs each having a level upstairs so the utilities would not have to be taken out separating them. Attorney Cochran stated placing interior steps in the back unit would be feasible leading to the second story. He referenced photographs of the laundry area that separate the units which will require heating, electrical, and plumbing upgrades to make the first floor one unit and stated that would not be economically feasible. He stated Ms. Murphy-Oesch and her son spoke to four contractors who did not want to give estimates because it would be too costly to undertake.

Attorney Cochran referenced a building permit was issued in 2008 for the exterior steps and the tax duplicate was updated from single-family to three-plex at that time. His client was unaware of how the building was taxed as she never looked at her tax bills for the entire time she owned the property. Ms. Murphy-Oesch was also unaware of why her taxes increased in 2008 and didn't recognize the change until after she was contacted by the zoning department.

Attorney Cochran referenced Exhibit B as a series of documents proving the structure has been a three-plex. A copy of an NSF check dated January 10, 2008 depicts the address as 4688 New Road #3. The second document is a bank letter regarding the same tenant dated September 20, 2007 pre-dating the building permit. The third document dated 1990 is a plumbing receipt depicting three units within the building. The last document was Ms. Murphy-Oesch's Form 1040 federal income tax return for 1981 which depicts the property as a three-plex. After purchasing the property, Ms. Murphy-Oesch's first two tenants were her daughters and the third tenant is now married to one of her daughters and all will testify the building had three separate units back then.

Attorney Cochran referenced Exhibit A as Google maps depicting the location of the subject property and how close multi-unit apartments are on New Road, Maplecrest Drive, and Rhode Island Drive. He also referenced multi-unit housing on South Raccoon Road. He stated the three-plex existed when the property was purchased.

Mr. Beaudis asked if the properties referenced are non-conforming or were they developed per the zoning code. Zoning Inspector Crivelli stated the areas are zoned as Residential R-3 Districts which allow for apartments. Attorney Cochran stated his objective is to show how close his client's property is to the larger multi-units.

Attorney Cochran referenced Exhibit C which depicts documents showing whenever there were problems at this location his client takes action to correct the problems. The shooting was accidental but the tenant was evicted. The drug incident did not involve a tenant but rather a friend who was visiting. A tenant did have a heart attack and a girl did overdose and die at the location so the tenant was subsequently evicted. A tenant named John Medved is in the process of being evicted. Attorney Cochran stated his client will testify that she removes bad tenants and a current tenant is not maintaining the yard as he should be.

Mr. Beaudis asked if Mr. Medved is a current tenant. Attorney Cochran stated Mr. Medved was notified he will be evicted.

Patricia Murphy-Oesch, 6390 Fairview Road, stated the first case was an overdose but it was a guest and not the tenant who eventually passed away. The second reported drug overdose was a heart attack of a guest of Mr. Medved. She described Mr. Medved as one whom does not drink or do drugs. He used to drive a taxi but quit his job because the vehicle was unsafe. She was told by a former boss to invest in real estate to supplement her Social Security and purchased the property and leased it to her daughters. She tries to keep the property up. She is doing her best. She expressed how difficult it is to find good renters.

Mr. Basista inquired about the cost of rent. Ms. Murphy-Oesch stated she charges \$325.00 to \$350.00 for the two little apartments and \$550.00 (in the winter) to \$650.00 for the big apartment. Renters pay their own utilities. She pays the water and trash pick-up bills.

Mr. Koch inquired about separate meters. Ms. Murphy-Oesch stated the pictures were of the hot water tank. It was determined there were not pictures of the separate meters including gas. Mr. Satterlee inquired about Ohio Edison service and building permits. Zoning Inspector Crivelli stated he did not research that. Ms. Murphy-Oesch stated she did not install the three electrical meters. Zoning Inspector Crivelli stated he can ask the County if they have records for the additional electrical boxes. Mr. Satterlee asked if she had the meters upgraded. Ms. Murphy-Oesch could not be sure but stated until three was on the same meter and she divided the meters per each unit but she has no idea when that happened.

Mr. Beaudis inquired about who the four different contractors were. Ms. Murphy-Oesch stated she talked to Jim Grantz of Gran-Mar Constriction. Her son talked to three other people, one being JRM from the phone book. She emphasized that it would not be cost effective. Mr. Satterlee asked who did the estimate that is feasible to convert to a duplex. Ms. Murphy-Oesch stated no one gave her an estimate to do that and that discussion was with her attorney. She stated she would have to separate the electric, gas, and the water plus put a stairway in. Mr. Satterlee observed that at one time the downstairs was one unit. Ms. Murphy-Oesch observed the first apartment was up and down and then there is the utility room and apartment three and they were on the same electric meter. An electrician came in he separated them so they could each pay their own bills. Atty. Cochran observed the rear portion appears to have been a garage that was converted to an apartment that was never part of the front unit and the utility space was at the back of the front unit and the garage became an apartment with part of the upper level. Ms. Murphy-Oesch was of the opinion that the back was a garage at one time. There is no basement just crawl space. Mr. Satterlee observed if there was a garage there would be no crawl space under it. Ms. Murphy-Oesch stated she did not know but the area was short and when she put the roof on she had the door installed. Zoning Inspector Crivelli stated the house was built prior to zoning and the only permit was for the garage.

Mr. Koch asked if the variance were to be approved would she get a conversion drawing for compliance with the building department. Ms. Murphy-Oesch stated she cannot afford to do that. Mr. Koch described the building as a death trap and advised an architect needs to be hired and the building made to conform to building code for safety reasons. He also expressed concerns with the current electrical system. Ms. Murphy-Oesch stated she agreed with him if you did that today. Mr. Koch stated he will not put his name on an approval with a public building that will put three potential tenants at risk with no code compliance. Mr. Koch also observed the recent tenets leave something to be desired and it's not incense burning in the other rooms. Mr. Koch stated there is no way he can see this moving forward. Attorney Cochran stated converting to a duplex will be a cost but that is something he is willing to discuss with his client and they would put that plan before the Board prior to the Board granting the variance. Mr. Koch stated if he had the blessing of the Mahoning County Building Department it would help in making a decision. Attorney Cochran asked to continue the case to allow the option of a plan for conversion. Mr. Koch stated he is only speaking for himself and not the entire Board.

Zoning Inspector Crivelli suggested at least two months. Mr. Satterlee suggested 90 days. He suggested the applicant contact the utilities for payment history. Mr. Koch suggested hiring an architect and visiting building inspections to determine the scope of the project and cost to assist in their decision making process. Attorney Cochran stated if it is not cost effective they can withdraw the case and proceed to converting to a single-family dwelling. Mr. Basista stated the Board does not take cost into their decision making. Mr. Satterlee stated if money is spent that does not mean the variance will be approved. Zoning Inspector Crivelli advised to submit conversion plans to building inspections, have them approved, then bring them back to the Board of Appeals for their consideration, and in the meantime no contractors would have to be hired. Zoning Inspector Crivelli explained the options the Board can take for Ms. Murphy-Oesch. Her worst case scenario is to submit a conversion plan to the zoning office for a single-family dwelling.

Jill Daily, 5711 Sharon Drive and 95 Kirwin Drive, stated she lived in the upstairs back apartment when she was younger. She stated it was quiet and there were three units. She used the outdoor steps to enter her unit. Ms. Daily remembered paying the gas bill. Her mother paid the water bill. She could not remember if she paid an electric bill as it has been about 35 years since she lived there. Mr. Beaudis stated a concern is the number of police calls. Ms. Daily stated drug use is going up exponentially everywhere.

Mr. Basista asked how she has the building insured. Ms. Murphy-Oesch stated as a three-plex. The insurance company inspected the building and took pictures. She could not remember when but would ask them. There was discussion of what the insurance companies look for before insuring. Mr. Koch stated you have to look at the specific policy and exclusions and three-plexes and single-family homes have different rating criteria. He suggested her policy is for a commercial building. Ms. Murphy-Oesch stated it is a commercial policy.

Natalie Winkle, 270 Marcia Drive, stated she was Patty's daughter and moved into apartment three and stated there was a small door and you had to duck your head to get in but it was not cumbersome. She lived there for 2 1/2 years and all was fine. She referenced a police report from a woman who saw a bear and the woman had some mental problems. Mr. Beaudis stated the building probably does not have a fire wall and the actions of one tenant can affect the other tenants. Ms. Winkle stated you can't discriminate and this particular woman had a mental handicap. She spoke of the lengthy eviction process. Mr. Koch stated the renters are still a responsibility for the property owners. Ms. Murphy-Oesch stated there are currently two tenants with month to month leases.

John Winkle, 270 Marcia Drive, stated he was Patty's son-in-law and lived in the small downstairs apartment in 1981 and stated there were three units there. He stated she always filed her taxes with that building be shown as a tri-plex. Mr. Satterlee observed that he thinks she did buy it as a three-plex but now there are complaints and everything has to be in order and the Board has a responsibility.

No one else in attendance to speak for the request.

Dawn Priest, 4696 New Road, stated she has resided for the past six years in the red house next door. She is a single mom five years previous and stated she knows what drug trafficking looks like as she lived in Compass West. She fears for her children’s safety and has been told by an Austintown realtor it will be hard to sell her house since it is next to the “Austintown drug house”. She stated a sheriff’s deputy advised her that the DEA has investigated the house. Her children are age three to eleven. She does not allow them out to play for fear. She described her family as honest people trying to make a future and feels she is fighting a losing battle. She stated she is also worried about the people who live in that house and described how thin the walls are and interior sewage problems. One time a tenant asked to borrow her phone to call Patricia regarding the sewage problem.

No one else in attendance to speak against the request.

The hearing was adjourned at 8:10P.M.

The hearing was reconvened at 8:21P.M.

2015-21-A- Murphy-Oesch: Motion by Mr. Koch to continue the case for 90 days.

Seconded by Mr. Basista.

Roll Call Vote: Mr. Koch – Yes; Mr. Basista – Yes; Mr. Glaros – Yes; Mr. Beaudis – Yes; and Mr. Satterlee – Yes.

Zoning Inspector Crivelli advised Atty. Cochran the board member’s would like to tour the building individually so as not to be in violation of the Sunshine laws.

There being nothing further to come before the Board, the meeting was adjourned at 8:23 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

Darren L. Crivelli, Zoning Inspector, Austintown Township

APPROVED: _____
Joe Koch - Chairman

DATE: _____

