

CITY OF PIQUA, OHIO
BOARD OF ZONING APPEALS MEETING MINUTES
TUESDAY, JULY 28, 2009

MUNICIPAL GOVERNMENT COMPLEX - COMMISSION CHAMBERS

CALL TO ORDER

At 6:00 Chairperson Mr. Reindel called the meeting to order. The Chair read the Introductory Statement of BZA Duties and outlined the order of business to be followed. The Chair reviewed the meeting conduct procedures and swore in those persons in attendance. The Chair asked all persons present to stand and raise their right hand. The Chair administered an oath to all persons present to testify before the BZA asking them to swear or affirm to tell the truth, and to acknowledge their intent to abide by the oath administered by stating, "I do" or "opposed". All persons present stood and took the oath to tell the truth with all persons present stating "I do" except for Jonathan Zweizig.

ROLL CALL

Members Present: Steve Reindel, Chair, Rebecca Harrison, Pat Jenkins,
Jimmy Reedy and Mark Spoltman
Staff Members: Stacy Wall, Chris Boeke, Chris Schmiesing, and Joni
Kakatolis, Clerk
Attendees: Stu Shear, Danny Gentry, Deron Yingst and Jonathan
Zweizig.

MEETING MINUTES

Pat Jenkins made a motion to approve the June 23, 2009 meeting minutes. The motion was seconded by Mark Spoltman and all voted aye.

OLD BUSINESS

1. Resolution BZA 01-09

A resolution nominating and electing the BZA Chairperson and Vice Chairperson for the 2009 calendar year.

A motion to bring this business to the table was made by Mark Spoltman and seconded by Rebecca Harrison. All voted aye. After the procedures for appointing a Chair and Vice Chair were read and the declaration of candidacy was recorded, Rebecca Harrison nominated Steve Reindel to serve as Chair. Pat Jenkins seconded the motion and all voted aye. Mr. Reindel will serve as Chair. Jimmy Reedy nominated Mark Spoltman to serve as Vice Chair and Pat Jenkins seconded this motion. All voted aye. Mark Spoltman will serve as Vice Chair.

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2. Resolution BZA 08-09

An appeal to the condemnation order pertaining to 408 N. Wayne St.

The Clerk read the agenda item.

Mr. Boeke offered staff comments noting that a condemnation order was sent to Absolute Construction Management on May 13, 2009. The condemnation order informed Absolute Construction that the building was being condemned after an inspection on 4-30-09 revealed an unapproved heating source, no panic hardware on the exit doors, plumbing that was done without permits, plumbing that was not up to code and endangering the water supply for the entire building, open sewer lines, no backflow preventers, electrical work done without permits, electrical work that was not up to code endangering the entire building and structural concerns.

The inspection of 4-30-09 was conducted as a result of the 4-28-09 BZA hearing which allowed apartment 12 at 408 N. Wayne St. to be occupied. As part of the Health Departments standard procedure before un-condemning a structure, an inspection was conducted to confirm the safety of that structure. During the inspection, new conditions were found that made the occupancy of any apartment in the apartment section of the building impossible. Substantial amounts of work had been done that affected the entire building, even though no one had permission from the Health Department to be in the condemned building and none of the required permits were obtained. Additional inspections by the Chief Plumbing inspector and Miami County Building Regulations confirmed the fact that the building is unsafe and must not be occupied in its current condition.

Mr. Boeke offered photographs of all issues he addressed in his staff report.

Mr. Spoltman asked Mr. Boeke for clarification of occupancy of the 2 other units and Mr. Boeke indicated those are separate from this building and remain occupied.

Mr. Reindel asked for clarification regarding the boiler, specifically if it was used to heat water for the entire building. He also asked for an explanation of panic hardware. Mr. Boeke advised that the boiler is the main heat source for the building. He also advised that panic hardware should be easily accessible and have no latch. In this building, the back door has a sliding latch that prevents easy exiting. Mr. Reindel asked about termites and Mr. Boeke indicated that the Health Department did not see present activity but did indicate that there is extensive damage. This was also a factor in the County Building Department's report of an unsafe structure due to structural damage.

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Mr. Reedy requested clarification that the Board had agreed to let people occupy a portion of the building. Mr. Boeke indicated yes. He also asked if an inspection had been done on the front section. Mr. Boeke indicated yes and that this section is currently occupied.

Mr. Jenkins referred to a May 15, 2009 letter that the City received and in the last sentence there was an indication that the party did not want any delay in hearing the appeal. Mrs. Wall addressed this item and explained that the appeal was submitted after the cut off date for agenda items to be on the agenda and also, counsel for Mr. Yingst had requested a continuance.

Jonathan Zweizig, Counsel for Mr. Yingst addressed the Board. He indicated that his request for subpoenas was denied. Mr. Zweizig argued that there is no ordinance or law that permits the Health Department to perform an inspection and that it was unlawful for them to enter the building. Mr. Zweizig indicated that the actual authority is when someone calls to make a complaint. In this case, there was no complaint - they just showed up and the reason they did so was because the City took exception to the fact that the BZA uncondemned 2 units at the previous meeting.

Mr. Zweizig went on to say that Mr. Yingst has not had a key to the building since February 10, 2009.

Mr. Zweizig addressed the following issues:

ELECTRICAL - electrical work was done by Cindy Bennett because she did not want her insurance pulled and she was attempting to go Metropolitan Housing.

PLUMBING - A mechanics lien against the plumber was presented to the board. Mr. Zweizig indicated that the plumber was not paid because he did not get the permit to do the work.

PANIC LOCKS - This building is probably 50 years old and had never had those locks. In all of the times the City went through the building, this issue was never mentioned.

BOILER - Has a sticker that says when it was inspected. This was never a problem before - why now?

STRUCTURE - This building is a very structurally safe building. Most of the support walls are concrete. It is not in danger of falling down.

At this time, there is no one in the building. Why condemn it - who is at risk? Even if the City was allowed on the property - which they are not, there needs to be evidence of immediate danger.

Mr. Zweizig indicates that the appeal should have provided for a stay. He also complained that every time he and/or his client are on the premises, there is a city employee following them around. He indicates

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that a work schedule was sent to the City and it was rejected indicating that permits had to be pulled before entrance would be permitted. He indicates that they are not asking for occupancy - they just want the keys to begin working on the projects.

Mark Spoltman asked if there was any part of the structure that was not condemned and Mr. Boeke indicated the entire structure is condemned and there has been no occupancy since 2-10-09.

Jimmy Reedy requested clarification regarding the 2 units previously discussed and it was clarified by Stacy Wall that those are a separate house connected to the structure and not a part of the condemnation order.

Pat Jenkins addressed Mr. Zweizig and indicated that he took exception to the comment that was made that the inspectors have not pointed out the problems in order for them to be addressed. Mr. Jenkins shared that his experience is that you present a building that is ready for inspection - it is not the inspector's responsibility to tell you what to get fixed.

Jimmy Reedy agrees with Mr. Jenkins and indicates that it is the owner's responsibility to find someone who is an approved building inspector and pay him for his services.

Mr. Yingst addressed the Board on the following issues:

BOILER - Indicates they were cited in November by the Health Department for using electric heaters instead of the boiler.

PLUMBING - Mr. Jamison is the only plumber that has been in the property. They tried to bring someone else in to finish the work. They are waiting for a price quote and a decision regarding access to the building.

BREAKER BOXES - Chris Boeke sent a list of violations and there was nothing other than the heat source. They walked through and on 2-18 sent a list of what had to be done before occupancy could be granted.

DOOR LOCK - They agreed to make it a more secured building. Received a call from the locksmith when he was there to install it that there was a condemnation order on the building.

Indicated that at the last meeting it was agreed that they could work on one apartment at a time and occupy them as they were completed - now the whole building is condemned. Says that he has been on the up and up with the City since day one. When we start to work on the building there are all of these issues. On 2-10-09 the City had full access to the building and now all of these issues arise.

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Mr. Spoltman asked Mr. Yingst when he took ownership of the building and the response was February, 2009. He also indicated that inspections were done in November, 2007.

Jimmy Reedy wanted clarification that no work had been done since 2-10-09 and Mr. Yingst clarified that the answer was yes - they have been locked out. He did indicate that he was working on the outside of the building.

Rebecca Harrison asked if Mr. Yingst's insurance company had ever required an inspection to the boiler and his response was no.

There were no other questions and no public comment.

Mr. Boeke addressed the Board again and readdressed the property code sections that apply to securing a building. He went on to say that the Health Department can do inspections as they are needed. This building was not in the same state as it was when Mr. Yingst bought the building and the issue is not who did the work - it is that it is not done properly.

Mark Spoltman commented that this building was condemned. The owner is saying that they have no access. He asked what the process is to get the building uncondemned to which Mr. Boeke responded that Mr. Yingst needs to get a plumbing permit first of all. Mark then asked when this was complete, could he have access. Mr. Boeke responded that the Health Department would allow access then. The plumbing and electrical issues are the main problem. There are a sequence of events that have to be followed and Mr. Yingst has to submit plans and requests.

Ms. Wall indicated that she has been involved with this matter since the last condemnation order and that Mr. Yingst needs to submit a work plan - what he submitted was a work schedule. When a work plan is submitted the City comes to the building and lets the person that is doing the work in. Permits are needed and taken out for each of the areas that need to be worked on. The issues that resulted in the condemnation order need to be dealt with first. Once the permits are pulled, Health will go and unlock the premises.

Ms. Wall also clarified the reason the Board has the issue before them. She referenced the codified ordinance which adopts the International Code and made reference to the code sections, which also authorize the City to enter the premises for inspection.

Jimmy Reedy wanted to know if the owner put the lock on the door himself would he have repeated access to do what he wanted to do. The response - the same procedure would have been required - The Work Plan and permits need to be obtained.

Pat Jenkins asked Chris what actually prompted the inspections to which Chris responded that the Police Department had received several complaints and the Health Department had 2 complaints that people were living without proper plumbing.

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The floor was opened for public comments and there was no public comment.

In the Board deliberations the Chair indicated there was a lot of information but for him the question was were the issues in the condemnation order violations of the property maintenance code on the day the inspector went in. He also indicated that the Board has a responsibility for the health and safety of the people around the structure. The County building official recommended certified electrician and structural engineers. Permits needed to be pulled and then the work could be done. The Chair is not comfortable going against the recommendation of the County building official. All other Board members are in agreement with the Chair.

Mark Spoltman also indicated that the only issue was whether the violation notice contained violations of the code and no evidence was presented to the contrary.

A motion to affirm the decision of the enforcing official and uphold the condemnation order was made by Mark Spoltman and seconded by Rebecca Harrison. All members voted aye.

Mr. Reedy was excused and a 5 minute recess was taken. There was still a majority of members present for voting. The meeting reconvened at 7:50 PM.

NEW BUSINESS

1. **Resolution BZA 09-09**

A resolution to request to variance the number of detached canopy signs on the south side of the detached canopy located at 900 Scott Drive.

2. **Resolution BZA 10-09**

A resolution to request to variance the number and location of detached canopy signs on the east side of the canopy located at 900 Scott Drive.

Mr. Schmiesing presented staff comments and made a recommendation to approve both of these requests with the following condition:

"the existing nonconforming detached sign located near the east lot line and USR 36 is to be removed within 15 days following the installation of the proposed electronic changeable copy signs."

The applicant had no comment and was in agreement with the proposed condition.

Mr. Jenkins asked the applicant if he wanted to do away with nonconforming signs and would the frontage sign be visible from the interstate?

Mr. Gentry indicated no they do have the high rise signs from the interstate.

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Mr. Spoltman agrees with the staff's report and thinks there are peculiar circumstances and that the new signs will be attractive.

A motion to approve Resolution BZA 09-09 with the condition was made by Mark Spoltman and seconded by Pat Jenkins.

A motion to approve Resolution BZA 10-09 with the condition was made by Mark Spoltman and seconded by Pat Jenkins.

OTHER BUSINESS

It was noted for the record that there was no other business.

ADJOURNMENT

With no further business to conduct it was moved by Pat Jenkins and seconded by Mark Spoltman that the meeting be adjourned. With all those present in favor the meeting was adjourned at 8:05 PM