

**ZONING BOARD OF APPEALS
MEETING MINUTES
August 23, 2017
CITY COUNCIL CHAMBER
7:00 P.M.**

1. CALL TO ORDER

The meeting was called to order at 7:00 pm.

II. ROLL CALL

Present: J. Albers, C. Garcia, H. Khan, J. Symanns, J. Talaga

Absent: None

Staff: C. Kochanek, Preservation Planner
J. Meyers, Community Development Manager

III. APPROVAL OF MINUTES

Commissioner Talaga moved to approve the minutes of July 26, 2017 (Support: C. Garcia) and the motion carried unanimously.

IV. PURPOSE OF MEETING

Chairman Albers stated the purpose of the meeting.

V. OLD BUSINESS

None

VI. NEW BUSINESS

1. Appeal of Administrative Decision – 433 Worden

Staff report was presented by the Preservation Planner, Cynthia Kochanek. Ms. Kochanek explained to the Zoning Board of Appeals as laid out in the staff report that Ms. Lupian purchased 433 Worden at tax foreclosure auction in 2016. Upon taking possession, she began work on restoring it to the last apparent use as a two-family dwelling. However, the property had not been legally occupied or used as a two-family residence since approximately 2009, had been through two tax foreclosure auctions, had water service shut off in 2009, and rental certifications had lapsed and not been renewed in 2009.

Further, the property had been rezoned from R2, which permitted two-family or single-family by right, to R1, single-family residential in 2015; R1 does not permit for two-family residences by right. Ms. Lupian was informed via postal mail in June that the previous two-family use had been determined to be abandoned, thus could not be restored; however, a single-family use was acceptable at this location.

Uses of structures or land generally fall into three broad categories: legal conforming, wherein a property and use conform to all current ordinances; legal non-conforming, wherein a property was initially approved under a certain set of regulations no longer in effect and could not be permitted as-is under the ordinance in effect at the present moment; and unlawful nonconforming, wherein a use could not be or was not approved under the ordinance that was in effect when it commenced. Zoning ordinances generally outline under what conditions a property may be considered legal nonconforming, and include provisions for legal nonconforming properties regarding changes of use, the possibility for expansion, changes of occupancy or ownership, removal or destruction, and abandonment.

In this case, staff made the determination under §122-349(e) of the Zoning Code of Ordinances that any legal nonconforming use that may have been present had been abandoned, and that such abandonment was evidenced by the actions noted above: the two tax foreclosures, the loss of water service which rendered the property uninhabitable, and the failure to maintain the certifications necessary to legally rent one or more of the two units.

Jennifer Symanns questioned if the water meter was removed or if there was just a water bond placed on the property. The ZBA requested additional information on this.

Commissioner Symanns moved to open the public portion of the meeting (Support: J. Talaga) and the motion carried unanimously.

Brenda Lupian, 2355 McKinley was in attendance.

Brenda Lupian questioned why she was not informed of the change and indicated that she would have went about renovating the building in a different way if she would have known that she could not have two units.

Commissioner Garcia moved to close the public portion of the meeting (Support: J. Symanns) and the motion carried unanimously.

Commissioner Symanns indicated that she felt the use was abandoned through the zoning ordinance Sec. 122-349 (7) Failure to maintain current licenses, certificates, permits, registrations or other appropriate documentation for the nonconforming use; (8) Bank or tax foreclosure; but would need further clarification on (1) One (1) or more utility meters, such as water, gas and electricity to the property, have been removed; because no evidence was provided that the water meter was removed.

Commissioner Symanns moved that the Zoning Board of Appeals affirm the administrative decision, with the following findings:

1. Per the provisions of §122-203 and §122-349(e), the two-family use at 433 Worden had been abandoned with findings; current licenses, certificates, permits, registrations, or other appropriate documentation had not been maintained since 2009; and the property had been foreclosed upon for taxes.
2. The City Planner acted within the scope of the authority provided under §122-381, "Duties and Enforcement Powers," when issuing a notice of violation.

Commissioner Kahn supported the motion and it was carried unanimously.

VII. ADJOURNMENT

Since there was no further business, Commissioner Symanns moved to adjourn the meeting (Support: J. Talaga) and the motion carried unanimously.

The meeting adjourned at 7:21 p.m.