

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT
May 27, 2021 Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, May 27, 2021 at 9:13 a.m. live-streamed with video and audio conferencing using Zoom.

Board Members present: Chairman Lee Taylor Jr., William Marino, Sidney Craig, James Nebo, and Octavius Reid

Alternate Members present: Bill Blackwelder

Board Members absent: Shaun Jones

Staff present: Joe Gates, Zoning Administrator; Charles Graham, Assistant City Attorney; and Chrystal Howard, Secretary

Chairman Taylor called the Board of Adjustment meeting to order.

Roll Call

Board Member Marino received several calls, informed callers that he could not speak on the matter, and encouraged callers to contact City staff to sign-up to speak. Board Member Craig was approached by Mr. Jacobs while looking at Rosemond Circle and he encouraged him to speak at this meeting. Board Member Nebo received one contact by text message and stated he did not read the text. Board Member Reid received a voice message and stated he deleted the message once he realized what it was about. Board Member Taylor did not receive any contacts.

Chairman Taylor declared a quorum.

Item I: Approval of March 25, 2021 Minutes

Board Member Marino made a motion to approve the minutes of March 25, 2021 and Board Member Nebo seconded the motion. The motion was approved (5-0).

Because of the quasi-judicial format of these hearings it is required by North Carolina law to swear or affirm in persons that speak before the commission and offer evidence. Ms. Howard administered the affirmation to speakers.

Board Member Taylor explained that only fact based testimony or evidence will be considered by the Board in deciding the quasi-judicial matters and speculation or opinion cannot be legally considered.

Discussion ensued on visibility of speakers during remote meetings.

Assistant City Attorney Graham explained the item to be heard is an appeal of an administrative decision, and Board of Adjustment hearings are quasi-judicial proceedings like a court, board members are not allowed to have ex-parte communication, only sworn evidence presented in a hearing is to be heard and is weighed in making a decision, opinions are not the basis of the decision, and this is a legal proceeding and the board is required to abide by the rules that govern the proceeding. He stated that the appeal was filed by a property owner and that staff had issued a notice of violation to the property owner stating the use of property was in violation of the city's ordinance. The property owner appealed the zoning administrator's opinion; therefore, the board is setting as judge to determine whether Mr. Gates' interpretation of the ordinance is correct or not. The board will make a motion to either uphold, reverse or modify his interpretation based on the evidence heard. He stated the order of business and procedure to follow for the hearing to the chair. Attorney Graham explained the witnesses with standing to provide evidence were the property owners or other property owners who would suffer special damages depending on how this case is decided, and provided an example for guidance. He noted that staff received a lot of phone calls and some citizens were a little frustrated when staff tried to explain standing and the hearing process, as staff was trying to follow the quasi-judicial requirements of hearings. Attorney Graham stated he is the Assistant City Attorney who provides legal advice to the members of the board in conducting their hearings.

Item II: Public Hearing # CEZONE20201107 – Cedric D. Rainey – 2409 Rosemond Circle

The applicant has submitted an appeal of a Notice of Violation.

Chairman Taylor opened the public hearing and recognized Attorney Cedrick Rainey, applicant. Attorney Rainey thanked Mr. Gates and Attorney Graham for their assistance. Attorney Rainey explained that this was an appeal from a notice of violation that was received on his client, Wagner Pascal. He displayed the notice of violation, noted section 7.2 was cited and the comparison of the

property and its current use to a rooming house. Attorney Rainey displayed the UNC School of Government Coates' Canons Blog: Interpreting the Zoning Ordinance article and shared that it will be used to give a framework. He shared that this article was a case that follows a similar pattern, but the Unified Development Ordinance (UDO) was different. Attorney Rainey commented on framing the discussion on how his client is in uniformity with the UDO was the best way in considering an appeal to Superior Court as second round. He gave an introduction of his client stating Mr. Pascal owns the property and works in conjunction with Community Room Rental. He explained that Community Room Rental was a conduit for young and seasonal professionals looking to live and share experiences with other similarly situated, was a property management company and advertises its availability of rooms in the property online, and Community Room Rental consults with the ordinance in its county using it as a framework for its business model. In interpreting the ordinance, several steps were provided in the article. Attorney Rainey began with *Start with the Ordinance* and read, "The best way to determine that intent is from the ordinance text. When the provisions of the ordinance are clear and unambiguous, those provisions must be applied as written." The Single-Family Dwelling definition as provided in the UDO was displayed and read placing an emphasis on family. Family definition as provided in the UDO was displayed and the second half of the definition was read. Attorney Rainey stated his client rents to individuals who are unrelated, and not more than six (6) persons who are unrelated were living at the property at that time in order to meet the definition of family. The next section in the article was *Consider the Interpretive Guidance*. Section 2.7a was displayed and Attorney Rainey read the first three sentences. The next section in the article was *Consider the Definition Thoroughly* and read, "When interpreting an ordinance, be sure to check for definitions of applicable terms" and "Definition includes structural elements as well as functional elements." Single-Family Dwelling definition was displayed. He stated a detached building was the structural element, and the functional element was occupied exclusively by one family. Family definition was displayed and he stated functionally a group of not more than six (6) persons who need not be related by blood, marriage, or adoption living together as a single housekeeping unit placing an emphasis on housekeeping unit. Section 2.7b was displayed and Attorney Rainey read a portion of the section, "Words not specifically defined in this Ordinance shall be defined by reference in the following order: first, the most recently adopted version of the State Building Code; second, the Merriam-Webster Online Dictionary." He commented that housekeeping was not defined in the State Building Code. Merriam-Webster Online Dictionary defined housekeeping as the management of a house and home affairs. The next section in the article was *Contrast Other Provisions* and included provisions; multi-family dwelling, manufactured dwelling, mixed use dwelling, single-family attached dwelling, and two-family dwelling emphasizing that dwelling Multi-family was the closest definition and classification. Multi-family Dwelling definition was displayed and he read the first sentence. Dwelling Unit definition was displayed and Attorney Rainey read the section, "containing self-sufficient bathroom and kitchen facilities" in each unit. He noted the definition was not applicable to his client's property. Attorney Rainey moved to the next sections in the article and classified these as catchalls; *Interpret for Logical Meaning, not Superfluous Words or Absurd Meanings, Use the Dictionary, and Consider Intent Language*. Attorney Rainey displayed the Notice of Violation and stated that section 7.2 was used as a catchall, which only works in situations where no other definition is applicable to the use. Attorney Rainey stated his argument was that this was not the case. It was a detached building occupied exclusively by one family which was no more than six (6) persons not related, and it was not a manufactured home. Based on the interpretation by the UNC School of Government, Mr. Rainey stated his client met the structural and functional elements with no deviations. Mr. Rainey displayed the Notice of Violation and read the section, "Your Property is being rented to multiple lodgers where separate bathroom and kitchen facilities are not provided in the nature of a rooming house. Rooming houses are not allowed as a use within the RS-12". He stated they take issue with being compared or identified as a rooming house and read the first three sentences in Section 2.7a. of the UDO. He stated rooming house was not defined in Section 2.7, but was defined in Section 16; therefore, making the classification of rooming house inappropriate. Using the rooming house definition as a way to say that his client was not compliant with the definitions was misplaced, and other terms are defined in Section 2.7 that are applicable without deviation. Attorney Rainey stated his client was in compliance with the ordinance working with the framework provided under the UDO. Attorney Rainey stated his client has complied with the terms of the UDO as it relates to an attached single-family dwelling and family definition, and if there was a desire to implement or limit the use, there were steps to do so. Referring to the definition of family and the reference of housekeeping unit, Attorney Rainey displayed the residential lease and stated that housekeeping was defined as the up keep and maintenance of the property. He briefly mentioned the tenant's obligations and owner's obligations. The owner's obligations, distinct from a rooming board or hospital, are only related to what a traditional landlord would be obligated to upkeep, not the general housekeeping. He also displayed the property maintenance in the lease and read, "The Tenant agrees to keep the common household area including kitchen, living room, dining room, porches, etc. in a tidy fashion." He commented that it explains further of how the areas are to be kept and the tenant's obligation in

doing it. Attorney Rainey stated the lease outlines the household duties and maintenance. He shared that guests were not allowed to be on the property for more than three (3) consecutive days. Attorney Rainey stated at no point were there more than six (6) unrelated persons with a lease hold estate at the property. He gave the example of six individuals, buddies from college, renting a six-bedroom house and a proposed single lease. He continued that no ordinance prevents them from doing this, and the only difference was individuals have signed an individual lease. He reiterated that this client meets the definition, allowed under the statutes, and that stating they were engaging in a use not defined in the UDO was misplaced. Regarding the UNC School of Government article, Attorney Rainey stated that should this matter be appealed, the case law was in their favor. He requested that no action be taken, that his clients be allowed to continue to operate the property as they have been, and consider what he has presented. Attorney Rainey reminded that his clients are a single-family resident in structural and is functionally a single-family residence because it is a six (6) persons unrelated who are living on a property and no more than that. He stated that what was in the Notice of Violation was a little misguided in terms of placement of his client as a rooming house. Attorney Rainey thanked the board for their time and consideration.

Chairman Taylor recognized Wagner Pascal. Mr. Pascal stated Attorney Rainey covered everything and he had nothing further to add.

Chairman Taylor recognized Jason Wallace. Mr. Wallace did not speak.

Board Member Nebo requested clarification that under normal situations this would be considered a rooming house, but based on the way members are attempting to live it should be considered a family unit. Attorney Rainey replied, "Yes and also the rooming house requires the landlord to be a live-in tenant." He reminded that rooming house was not defined in Section 2.7 and was only applicable to Section 16 of the ordinance, and there was a definition that meets the verbiage contained in Section 2.7.

Chairman Taylor commented on the lease and a landlord, and stated that he was unaware of any family unit that has a landlord. Considering landlord and tenant, it clouds the situation for a family use. He commented on landlord as not a family member and no definition of landlord and tenant involved in a family unit. Chairman Taylor allowed the applicant to respond to his comments. Mr. Rainey explained the distinction when bringing in landlord, it insinuates the lease hold estate, or type of estate the property is under. He was not sure how landlord / tenant distinction or type of estate owned would play a role in distinguishing an attached single-family dwelling with one family.

Chairman Taylor recognized Joe Gates, CZO, Zoning Administrator for staff presentation. Mr. Gates began by stating that contrary to Mr. Rainey's assertion the ordinance defines rooming house in Section 2. He clarified that Chapter 16 was located in the Code of Ordinance. He clarified that the City has two codes; the land use code known as the Unified Development Ordinance primarily handling land use terms, and the Code of Ordinance. The Code of Ordinance handles other permitted requirements when doing a rooming house in addition to meeting the zoning ordinance. Both work together for an individual who wants to legally operate a rooming house. Mr. Gates noted the reference provided comes from Section 2.7 and was listed as a use in Table 7.1 under the use category Rooming House. Mr. Gates proceeded with his presentation. Mr. Gates stated the applicant's name, owner's name, property location and the request. He explained that the City received an anonymous complaint through the online portal system (CityView) on December 1st, 2020 with an accusation that rooms for rent have been posted on multiple websites. The property was purchased in September of 2020 and shortly afterwards the property owner began advertising the property for rent. An inspection was made the same day of the complaint. Online advertisements were reviewed online for this address and the findings were documented in the zoning case file. A Notice of Violation was created and mailed the next day. A second Notice of Violation was sent out after staff discovered another address for Mr. Wagner at his Colorado address on February 25th, 2021. A few weeks later, staff proceeded with good service, which was confirmed by Mr. Wagner and his business partner Jason Wallace. The Notice of Violation was appealed by Cedrick Rainey on April 13th, 2021 within the allotted time as defined in the UDO. Mr. Gates explained the primary objective of the board is to review the Zoning Administrator's decision based on evidence presented during the hearing. In making such a decision, the Board of Adjustment shall have all the powers of the Administrator with respect to the action being contested. Decisions the board can make in hearing an appeal are in Section 5.13.2 to uphold (affirm), reverse or modify the decision. Mr. Gates reviewed the definitions from the UDO of a rooming house, family and single-family dwelling and the intent of the ordinance. He read the definition of a rooming house as defined in Table 2.7-1 of the Unified Development Ordinance with an emphasis on resident owner. He stated in meeting the criteria of a rooming house within the City of Gastonia is if the resident owner lives in the house and the maximum number of lodgers does not

exceed three. The City of Gastonia's UDO Table 2.7-1 Defined Terms was displayed online through the Municode Library. While in the UDO, Mr. Gates displayed the use, Rooming House in Table 7.1-1 under Section 7.5, and indicated that a definition exists, and the use was permitted in three zoning districts. He noted that a rooming house was not permitted in the RS-12. He explained that a rooming house would need to meet the definition, be in a district that permits a rooming house, and receive a conditional use permit. Mr. Gates read the definition of a family and emphasized "single housing unit" being mentioned twice in the definition and important. He stated whether individual, related or non-related, the key is that this family functions as a single housekeeping unit. Mr. Gates noted that the phrase single housekeeping unit is not defined in the UDO, or the two dictionaries referenced in Section 2.7(b); therefore, the administrator shall make the interpretation if not found in the referenced dictionary. Mr. Gates stated he checked numerous NC cities and they did not define this phrase; therefore, he broadened his search to other ordinances. He found common themes such as head of household, common access to entire house, one lease if leased, sharing of responsibilities, relationships other than just living in the house, and occupants choose who gets to join in the lease as they are sharing the house under one single lease rather than multiple leases to multiple individuals. Examples displayed regarding the definition of a Single Housekeeping Unit were Yucaipa, CA City Code 812.19083 and Stroudsburg, PA. Mr. Gates read the definition of a single-family dwelling. He displayed the rooming house section in Table of Uses 7.1-1 and reiterated that rooming houses were not permitted in the RS-12 zoning district and permitted in the RS-8, UMU, and C-1 zoning district with conditional zoning or a conditional use permit. Mr. Gates transitioned to the Notice of Violation letter and briefly explained the letter included the zoning district as RS-12, a rooming house was not permitted in the RS-12 zoning district, occupants were not operating as a single-family unit, and operating a rooming house in the RS-12 district was in violation and should cease. Mr. Gates explained the purpose of RS-12 as one of four urban residential districts, primarily geared toward single-family residential development, prohibits multi-family uses - other high density living arrangements, and protects single-family homeowner's by requiring larger street frontages and lot areas, lowering the density. Mr. Gates displayed advertisements before Mr. Wagner took ownership and advertisements after being sold to Mr. Wagner using Realtor and Coldwell Banker. Regarding advertising before Mr. Wagner took ownership, Mr. Gates displayed and commented on Realtor.com advertisement as a 3 bedroom 2.5 bath single-family home and Coldwell Banker also advertised as single-family, 3 bedrooms 2.5 bath. Regarding advertising after being sold to Mr. Wagner, Mr. Gates displayed and commented on Realtor.com advertised as condo for rent 1 bed and 1 bath with a total square footage, and bedrooms advertised having electronic private door locks. Switching between before and after website pages, Mr. Gates showed walls closed off to create bedrooms. Mr. Gates transitioned back to his presentation displaying advertisements reiterating his before and after comments. He read sections in the property details for 2409 Rosemond Circle Unit 3 about sharing common spaces, have own private bedroom, marking specific shelving for each person, and not engaging with their roommates. He commented that access to the entire house was not available not acting as a single-family unit, not sharing food/meals together, and the term roommates and not family was used. Mr. Gates displayed CommunityRoomRental.com's definition of co-living and emphasized on co-living is more than renting a room, it's a business transaction, accommodates up to 6 unrelated people. He commented that pieces of information were taken by Mr. Rainey that were not telling the whole story to make a point.

Board Member Nebo asked if there were currently six tenants or plans for up to having six tenants. Mr. Gates replied based on advertisement and the leases, this property was eligible for up to six tenants, but was not sure of how many were currently living there. He stated unit 3 was advertised online, but he did not have lease information for this house. Board Member Nebo asked if the current use being used belongs in another zoning district. Mr. Gates replied that the Notice of Violation was sent because the use rooming house was not allowed in RS-12. He referred to the rooming house definition and explained the requirement to successfully operate a rooming house in the City of Gastonia. Chairman Taylor stated the website showed up to six.

Brief discussion ensued on rezoning the property, which is handled by the Gastonia Planning Commission or City Council, and the Board of Adjustment's role for an appeal.

Chairman Taylor declared a five-minute recess. The meeting recessed at 10:44 a.m. and reconvened at 10:51 a.m.

Chairman Taylor recognized Winter Barneycastle, 2413 Regal Drive of Gastonia, NC. Ms. Barneycastle was not sworn in at the beginning of the meeting; therefore, Ms. Howard administered the oath and Ms. Barneycastle affirmed the oath. Ms. Barneycastle stated she lives behind the subject property. She informed the board that the front living room was turned into a bedroom, the half bath became a full bath, and the den was turned into bedroom. One large bedroom on the upper level was

turned into two bedrooms for a total of four bedrooms upstairs and two on the main floor. The dining room now the living room and the kitchen were shared. She commented the Charlotte apartment site has six bedrooms for rent and one unit was available for \$675 a month. Four bedrooms were listed for \$650 a month and one for \$750 a month. She stated the total amount was over \$4,000 a month and the owner was not living at the house. Ms. Barneycastle stated the definition she found on the single housekeeping unit mentioned was under a single written lease. She stated there were six individual bedrooms, six strangers, six different leases, and six to twelve month leases per room. She stated this property was not zoned multi-family. Ms. Barneycastle stated a lot of what she wanted to say had already been said. She commented on a past complaint made and the safety issue.

Chairman Taylor recognized Douglas Johnson, 2417 Regal Drive of Gastonia, NC. Mr. Johnson shared his understanding of Mr. Pascal's business Co-Living Capital and that it was a commercial, for profit enterprise. He read from Mr. Pascal's LinkedIn profile, "Today we take \$80,000 from investors to finance the down payment of our single-family homes and pay them an 8% interest rate annually over an eight-ten-year period, which are backed by hard assets of the houses themselves. He shared this was a for-profit business. Mr. Johnson referred to Mr. Gates' presentation and examples defining single housekeeping unit and said that he did the same thing resulting in the same commonality. He read the Township of East Whiteland, PA's definition of a single housekeeping unit provided online <https://ecode360.com/34368609?highlight=housekeeping&searchId=11664690043392600#34368609>. Mr. Johnson read a portion of the definition of Family in the New Bern, NC Code of Ordinance Article II Section 15-15(39) https://library.municode.com/nc/new_bern/codes/code_of_ordinances?nodeId=PTIICOOR_APXAL_AUS_ARTIIDE_S15-15BADEIN/. Mr. Johnson requested the board to consider the intent of the UDO. He also commented on the safety of the neighborhood and for the kids.

Chairman Taylor recognized Gary Carpinski, 2420 Rosemond Circle of Gastonia, NC. He talked about Woodleigh being a well maintained neighborhood of single-family homes. He agreed and supported Mr. Gates' findings that the use of the house did not meet the criteria of a single-family home. Mr. Carpinski read the definition of Family in Section 2.7-1 of the UDO https://library.municode.com/nc/gastonia/codes/unified_development_ordinance?nodeId=CH2INR_UCODE_S2.7TEDEOR. He explained that the appeal may be based on only a portion of the definition regarding a group of not more than six (6) persons who need not be related by blood, marriage, or adoption living together as a single housekeeping unit. He spoke on the intent of the zoning code requirement related to a single-family housing unit does not come into existence by housing dispersant individuals in the premises brought together only through the placement of advertisement where the only motive to be together as a single housekeeping unit is for the six dispersant individuals to have a place to stay. He stated this was a rooming house. Mr. Carpinski read the definition of Rooming House in Section 2.7-1 of the UDO. He explained that Mr. Pascal was in violation because six rooms were offered, exceeded by three, and separate bathrooms were offered. He stated the owner was not a resident. He talked about lack of care and maintenance, public hazard, and housing values that may be impaired.

Chairman Taylor recognized Josh Haggard. Mr. Haggard was not present to speak.

Chairman Taylor recognized Craig Curtis, 120 Windsong Court of Gastonia, NC. Mr. Curtis was not sworn in at the beginning of the meeting; therefore, Ms. Howard administered the oath and Mr. Curtis affirmed the oath. Mr. Curtis stated a declaration of building restrictions and protective covenants was on file with Gaston County for the neighborhood of Woodleigh. Mr. Curtis read from section 10 of the declaration, "No noxious or offensive activities shall be carried on upon any lot nor shall anything be done there upon which may be or become an annoyance to the surrounding lot owners and to the neighborhood and no business activity whatsoever shall be conducted or maintained upon any properties which this instrument shall pertain."

Board Member Nebo asked if the property owner received a copy of the declaration and Mr. Curtis replied that he received a copy when he purchased his property, but was unaware if Mr. Pascal received a copy. Brief discussion ensued on closing attorneys providing homebuyers with documents including restrictive covenants, and that city enforces zoning ordinance, not private covenants.

Chairman Taylor recognized Jason Wallace, 5911 Grosner Place of Charlotte, NC. Mr. Wallace stated he was the CEO of Community Room Rental and business partner with Mr. Pascal. Mr. Wallace gave a brief background of the business and stated their intent was to cater to the missing middle in terms of creating affordable housing for professionals and entrepreneurs who want to open local businesses with a vested interest in the community. He talked about the perception being as a

transaction and the fear of the unknown. Mr. Wallace stated CommunityRoomRental.com has a lot of engaging activities about creating a connection to the community and greater community of the surrounding counties. He talked about their intent as good for the city and supports the missing middle caring to a population that is underserved. Mr. Wallace stated he received one contact.

Chairman Taylor asked Assistant City Attorney Graham to explained the purpose of the board. Attorney Graham stated this was an appeal of the issuance of a Notice of Violation. The property has received a notice that it is in violation of the current zoning ordinance and that the current use of property must stop. Based on evidence heard, the board needs to make a decision to uphold the Notice of Violation, reverse the Notice of Violation and state the use is allowed under the UDO, or modify the Zoning Administrator's determination in some way. In this case, the board cannot modify the ordinance definitions; therefore, this is a situation where the board either upholds or reverses the Notice of Violation because of the definitions. The board can interpret and discern the meaning of the ordinance. After hearing all the evidence, the board is to make a decision to either uphold the Notice of Violation or reverse the Notice of Violation and state why they decided the definition meets or does not meet the definition for the record.

Chairman Taylor acknowledged Mr. Reid as unavailable for all of the deliberation. Discussion ensued on quorum and it was determined that the board retained quorum.

Board Member Nebo made a motion to uphold the Notice of Violation as the property is not used in the manner described by the UDO code, not used in a manner described by its intended residential district; therefore, should not be used as what appears to be a rooming house. Board Member Marino seconded the motion. The motion was unanimously passed (5-0).

Item III: Other Announcements or Business

Chairman Taylor thanked everyone for their attendance, diligence, attention and work they put into this matter.

Next Board of Adjustment meeting is scheduled on Thursday, June 24th, if needed. Staff did not receive any submittals for the June meeting; therefore, the meeting will be cancelled. A cancellation notice will be emailed.

Chairman Taylor entertained a motion to adjourn. Board Member Marino made a motion to adjourn and Board Member Nebo seconded the motion. The motion was passed (5-0); therefore, the meeting was adjourned at 10:54 a.m.

Chrystal Howard, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Lee Taylor Jr.

Zoning Board of Adjustment
City of Gastonia, NC