

**Minutes of the Zoning Board of Appeals  
Of the City of Portland**

Held on Monday, February 12, 2018 at 7:00 P.M.  
In Council Chambers at City Hall

Members Present: Parsons, Stahl, Barnes, Graham

Absent: Fedewa

Staff: City Manager Gorman, City Clerk Miller, Deputy Zoning Administrator Gensterblum

Guests: Terry Frewen, Justin Hengesbach

Chair Parsons called the meeting to order at 7:00 P.M. with the Pledge of Allegiance.

There were no public comments.

Motion by Graham, supported by Stahl, to approve the proposed agenda as presented.

Yeas: Graham, Stahl, Barnes, Parsons

Nays: None

Absent: Fedewa

Approved

Motion by Graham, supported by Barnes, to excuse the absence of Member Fedewa due to illness.

Yeas: Graham, Barnes, Stahl, Parsons

Nays: None

Absent: Fedewa

Approved

Motion by Barnes, supported by Graham, to approve the minutes of the August 14, 2017 meeting as presented.

Yeas: Barnes, Graham, Stahl, Parsons

Nays: None

Absent: Fedewa

Approved

Chair Parsons stated that she will run the meeting but will recuse herself from comment and voting due to a business relationship with Mr. Frewen.

Chair Parsons read Section 42-71 (a) (5) and (6) regarding the appeals process for the Zoning Board of Appeals.

City Manager Gorman presented the request for appeal of the decision of the Planning Commission denying the Special Land Use request by Terry Frewen for the property at 1323 E. Bridge St.

Mr. Frewen presented information supporting his request for appeal of the denial by the Planning Commission. He referenced the Special Land Use definition and the Table of Uses from the Zoning

Ordinance. He further stated his feeling that the type of use for an accessory apartment is permitted under the ordinance under a Special Land Use and the property in question meets the requirements. He further stated that he can't find anywhere in the ordinance that states the accessory apartment has to be on the 2<sup>nd</sup> story as stated by the Planning Commission. He stated his feeling that the single-family use was not abandoned by the previous owner as it wasn't fully converted to a commercial building, although the previous owner did not reside in the building. Mr. Frewen stated that there are other properties similar to this in the C-2 District. He also stated his feeling that all of the criteria for a Special Land Use have been met based on both definitions.

Member Graham inquired if there is a kitchen and bathroom in the upstairs of the building.

Mr. Frewen stated that there is not.

Member Stahl inquired if she understood the definition correctly that the principal owner of the dwelling must reside in the home.

City Manager Gorman explained that the criteria in Section 42-341 (a) for an accessory apartment were provided to the Planning Commission. Their decision was based on those standards. City Manager Gorman presented the criteria and the reasoning behind each. He further stated that the criteria seem to apply to the residential district. He also stated that the argument is that the property is now a commercial property according to the law provided by the Zoning Ordinance. City staff tried to find a scenario where there is an apartment in the commercial district that has been approved for the apartment to be downstairs; and is not completely upstairs, but was unable to find a similar situation.

Member Stahl asked if anyone lived in the building during the previous use as a law office.

Mr. Frewen stated that no one lived in the building.

Mayor Barnes stated that in deciding on the appeal, the ZBA does not make a decision about the request but determines whether the Planning Commission acted properly.

Mayor Barnes noted comments in the draft minutes of the January 10, 2018 Planning Commission meeting by both Chair Grapentien and Member Kmetz that illustrate the rationale for their denial of the Special Land Use request. Mayor Barnes further noted that the building at 1323 E. Bridge St. is a commercial property and the definition for an accessory apartment states that an accessory apartment in a commercial building can not be on the main floor. The Planning Commission then voted on the request.

Mayor Barnes stated his feeling that based on the actions of the Planning Commission he feels that they appropriately applied the standards.

Mr. Frewen referred to the definition of an accessory apartment and stated that the building at 1323 E. Bridge St. is a residential dwelling. He stated that the building was and still is a dwelling and that nothing has been changed to the structure of the building.

Mayor Barnes stated that once the building was abandoned as a residence it became a commercial building.

There was discussion.

Mr. Frewen read the definition of an accessory apartment under Section 42-6 of the Zoning Ordinance and stated that the property at 1323 E. Bridge St. was constructed as a residence and is still a residence. He is requesting to use the front portion of the building for a commercial use.

Motion by Barnes, supported by Graham, that the Planning Commission acted properly in denying the request by Mr. Frewen for a Special Land Use permit for the building located at 1323 E. Bridge St. The request was for an accessory apartment for a subject to live on the 1<sup>st</sup> floor of the structure and operate a cell phone repair business. It was determined that the building in question is located in a C-2 Commercial District and as such the accessory apartment would have to be located above the 1<sup>st</sup> floor as stated in Section 42-6 of the Zoning Ordinance of the City of Portland.

There was no further discussion. Chair Parsons called for the roll call vote.

City Clerk Miller held the roll call vote.

Barnes – Yes

Graham – Yes

Stahl – Yes

Parsons – Abstain

Fedewa – Absent.

Motion Passes.

There were no other Board Member comments.

Motion by Graham, supported by Stahl, to adjourn the meeting at 7:26 P.M.

Yeas: Graham, Stahl, Barnes, Parsons

Nays: None

Absent: Fedewa

Adjourned.

Respectfully submitted,

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Jayne Graham, Secretary