

February 23, 2022

The regular meeting of the Zoning Hearing Board was held on Wednesday, February 23, 2022, at 7:00p.m. in the Assembly Room of the Millcreek Township Municipal Building, 3608 West 26<sup>th</sup> Street.

**PRESENT:** Messrs. Tanner, Calhoun, Attorney Jeremy Toman, and Matthew Puz Jr., Zoning & Development Officer. Absent was Ms. Spry.

**BUSINESS:**

**Appeal No. 22-4: ALEX GREENAWALT**, for property located at 420 Strathmore Avenue, asking for a use variance to continue using the property as a two-family dwelling in the R-1 Single Family Residential District. **Index 212-031**

Alex Greenawalt, 420 Strathmore Ave., spoke on behalf of this variance. He stated that he was asking for a use variance for the property located at 420 Strathmore Avenue that would permit him to use his property as a two-unit property despite the R-1 Zoning. He informed the members that he had closed on this property January 19, 2022. The previous owner who operated the property for more than forty years, converted the property from a single-family home to a two-family residence by way of construction. Unfortunately, the prior owner did not take the proper steps to change the use prior to the changes nor anytime following.

Mr. Tanner asked when the two-family construction occurred. Mr. Greenawalt replied he was not sure when it happened. Mr. Greenawalt noted that the last tenant occupied the space for eight years and was not sure about prior tenants. Mr. Greenawalt then stated that since the time of the conversion, the previous owner of the property operated the property knowingly, or unknowingly, as a non-conforming duplex with multiple tenants taking residence in the upstairs unit of the property. The upstairs unit had its own driveway, mailbox, entry/exit, kitchen, bedroom, and bathroom. The only thing that was missing was a second form of egress which he intended to solve if approved by way of a wall mounted window fire escape for the bedroom. The separation of the two units inhibits the ability of the property to function as single-family home. The mortgage and appraisal on the property also viewed the property as a duplex despite the single-family zoning due to the physical characteristics. The value of the home could decrease to revert the property back to single family dwelling. As stated previously, these unique circumstances were brought on by the previous owner in her decision to renovate the space without going through the proper protocol to do so in conformity with the Township. This property had operated as a two unit for several years without issue in the neighborhood and was only one of several two-unit properties in the neighborhood and would not alter the essential character of the neighborhood. If approved, he intended to occupy the property as an owner-occupied duplex and the upper unit would remain unoccupied until the use was legal.

Mr. Calhoun asked Mr. Greenawalt how he knew he was out of compliance. Mr. Greenawalt replied that it came to his attention at the end of the process by his realtor that in Erie County records the property was zoned as a two unit and Millcreek Township had it as a single-family residence. He wondered how there could be a discrepancy.

Mr. Tanner asked Mr. Greenawalt if there were two different addresses for this property. Mr. Greenawalt replied yes there were two different addresses. Mr. Puz responded that according to the Township records 420 Strathmore Avenue was the legal address.

Mr. Tanner asked when he drove past this property, he saw two addresses and mailboxes and wanted to know if 911 had an established address. Mr. Puz replied that not according to the Township records. This issue came up often when someone wanted to change their address but not notify anyone. Mr. Tanner asked if he would go to Erie County website would 418 Strathmore Avenue come up. Mr. Puz replied yes it would, but the Township records were the accurate records.

Mr. Cahloun asked if there were other homes that have duplexes in the area and if there were other issues. Mr. Puz replied that if they did exist, they were not brought to his attention. Mr. Greenawalt commented that there were more duplexes in the neighborhood, but he didn't know how they operated with the multiple addresses.

James Lindenmuth, 2744 W 23, asked if this duplex had separate utilities. Mr. Greenawalt replied that they had separate gas and electric.

Matthew Waldinger, Millcreek Township Director of Planning & Development, asked if there were two separate sewer bills. Mr. Greenawalt replied that he was not sure. Mr. Waldinger then asked that at the end of the closing process, he was made aware about the duplex situation. Mr. Greenawalt replied he was made aware about a week before closing. Mr. Waldinger informed the Board that on behalf of the Township, they were in opposition to this request. The neighborhood in question was in the middle of an extremely large single family residential district, an area north of West Lake Road that stretched from Marshall Drive to west of the Township line in Fairview Township. There had been no evidence presented that the duplex was ever legally established as a use and the applicant had acknowledged that he found out prior to closing that it was not a legally established use but still purchased it. The appeal should be denied.

Mr. Tanner asked how the Township would go about with code enforcement issues about these types of situations. He did drive down in that area and distinctively saw two driveways and two addresses. Mr. Waldinger explained that the Township has no one actively looking for the duplexes so there was no way to catch them. Potentially in the future, if the Township would do a rental registration, they may end up catching these types of situations.

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There were no other comments from the public.

A motion was made by Mr. Tanner, seconded by Mr. Calhoun that this appeal be denied. Motion 2-0

**Appeal No. 22-5: C&M MARTIN REALTIES, LLC**, for three vacant properties located on the southside of West 21<sup>st</sup> Street between Lowell Avenue and Filmore Avenue and identified by County Tax Parcel ID's 33-48-204-8, 9, and 10, asking for a dimensional variance for the rear yard setback to construct three buildings within the required rear yard setback in the I-1 Light Industrial District. **Index 312-008**

Mackenzie Martin, 2544 W 24 St., spoke on behalf of this variance. She stated that when they had purchased the property, they were aware of a 10' front yard setback. During the permit process, they had to address the issue of this property being in a subdivision and, therefore, the buildings had to be setbacks 25'. They then decided to construct kit buildings which limited them on size. They were asking for a 20' variance on the two end properties and a 5' variance for the middle property to accommodate the prefab kits.

Mr. Tanner asked Ms. Martin to clarify because the application stated that the kits only came in 100' and that the center one was only 85'. Ms. Martin replied that she and her husband were putting the kits together and they would have to do significant modification to the middle kit and would prefer not to do it to all the kits.

Mr. Tanner stated that, unfortunately for a variance, a hardship would have to be proven and a financial hardship was not one. Mr. Calhoun asked if they had explored any other options. Ms. Martin replied they were general contractors and had to use the kits.

Mr. Tanner asked if this variance was denied, what would they do. Ms. Martin replied they would still build and would like to use this property to its full potential. She was upset when she found out that this industrial lot was being restricted on the zoning setback of 25' because it was considered a subdivision.

Mr. Calhoun asked if they had talked to any of the neighbors. Ms. Martin replied no they did not.

Atty. Toman asked if the setback was always 25'. Mr. Puz responded that setback in the light industrial district was 10'. The building setback in the recorded subdivision was 25'.

Matt Waldinger, Millcreek Township Director of Planning & Development, asked that there were 7' side yard setbacks as shown on the plan. The 120' width on the lot could accommodate the 100' buildings from east to west direction and asked if there was a reason why they did not want them placed in that direction. Ms. Martin replied that they wanted to keep them as three separate parcels in case they ever wanted to sell one of the lots. She did not want the lots combined.

Mr. Waldinger stated that on behalf of the Township, they were in opposition of this appeal. The applicant's proposed structures that were too large for the parcel, smaller structures could be placed which met the Township requirements, the site could be oriented differently to allow larger buildings within the required setbacks, and that any hardships were the applicants own making which were the results of choices of building sizes or site configuration. Therefore, the application should be denied.

James Lindenmuth, 2744 W 23, asked what was going into the buildings. Ms. Martin replied that they were going to store items for construction for their business and might have friends rent a unit.

Mr. Lindenmuth asked about the water run off and stormwater ponds concerning this property. Ms. Martin commented that each lot would have its own water run off retention.

Mr. Calhoun asked Mr. Lindenmuth if he was for or against this variance. Mr. Lindenmuth replied that he just wanted to make sure it was not three businesses and was concerned about the water run-off.

There were no other comments from the public.

A motion was made by Mr. Calhoun, seconded by Mr. Tanner that this appeal be denied. Motion 2-0

There being no further business, the meeting was adjourned at 7:22 p.m.

Scott Calhoun -Acting Secretary