

**BOARD OF ZONING APPEALS**  
**Meeting Minutes**  
**Wednesday, November 16, 2011**

**Call to Order**

The November 16, 2011 Board of Zoning Appeals meeting was called to order at 7:32 p.m.

Those members present: Todd Hollenbaugh, Gary Meyer, Prue Dana, George Prentice, and John Barnhart.

Those members excused: None.

Staff members present: Jung-Han Chen, Steve McHugh, and Amy Blankenship.

Staff members excused: None.

**Executive Session**

Ms. Dana made motion to approve the agenda with the deletion of the Executive Session. Mr. Barnhart seconded the motion. The motion passed 5-0-0.

**Adjudication Hearing\***

**BZA-06-2011 135 W. Central & 711 S. College, Appeal of Administrator's Decision**  
**Section 1137.07(a) to allow for the continuance of a nonconforming 3-Family Rental,**  
**Jim Clawson, Agent (Continued)**

Mr. Barnhart made motion to adjourn to BZA-06-2011. Ms. Dana seconded the motion. All were in favor.

Mr. Hollenbaugh referred to Mr. Clawson's additional documents included in the agenda. Mr. Hollenbaugh announced that the BZA were back tonight providing the Applicant with a continuance granting them extra time to secure evidence for their support of their appeal.

Mr. Steve McHugh shared with the BZA that their Decision Standard tonight would be slightly different than other variance requests, and stated that the Supreme Court of Ohio has held that the standard to apply in a case such as this is whether "a preponderance of reliable, probative and substantial evidence supports the decision" of the Zoning Administrator. The Board of Zoning Appeals determined the Administrator's Decision was supported by a preponderance of reliable, probative and substantial evidence.

Mr. Hollenbaugh announced that the Board had asked for reliable substantial evidence; leases, cancelled checks, none of which had been presented. Mr. Hollenbaugh stated that none of the information asked for at the last meeting was provided. Mr. Hollenbaugh inquired the Applicant/Agent if they wished to continue the hearing. Mr. Clawson and Mr. Freade stated yes. Mr. Hollenbaugh then announced the Board was in the Continuance Hearing.

Mr. Hollenbaugh announced that this was a case amongst BZA themselves.

Mr. Hollenbaugh stated that the Board received ample testimony at the last meeting and that the BZA's task was to rule on the Zoning Administrator's Decision.

Ms. Dana stated she felt the information submitted possibly proved ownership but not being rented and that the Board was looking for some sort of lease, rental schedule; that needed to be in our packet in order to make a decision.

Mr. Prentice noted that no evidence that the units had been rented continuously during this time was provided; utility records didn't verify as well as there was no evidence of occupancy. Therefore, nothing proves the property was rented continuously. Mr. Prentice announced he supported the Administrators decision.

Mr. Barnhart stated he agreed.

Mr. Meyer referred to photos which obviously showed someone lived there. Other BZA noted that the question was whether the home was rented. Mr. McHugh stated the photos could have been outdated.

Ms. Dana added that people could have lived there but that did not prove income was coming in as rentals.

Mr. McHugh asked the BZA to focus on the evidence before them; does the evidence, based on the Administrators refusal letter, prove otherwise.

Mr. Hollenbaugh referenced page 41 and 43 of the agenda and the signed receipt of certified letter and having received no response. Mr. Hollenbaugh noted that signed tax returns could have been provided and they weren't.

Ms. Dana made motion, based on documents on file and evidence presented, to uphold the Administrators denial for 135 W. Central Avenue and 711 S. College Avenue for the grandfathered use of a 3-family structure as the rental permit lapsed prior to the request and because of that, what is asked for in terms of a permit now, needs to conform to the current zoning code regulations; therefore motion to deny the appeal. The motion to Deny BZA-06-2011 passed with the following roll call:

AYE: Todd Hollenbaugh, Gary Meyer, Prue Dana, George Prentice, John Barnhart (5)

NAY: None (0)

ABS: None (0)

### [Approval of Minutes of the October 25, 2011 Special Meeting](#)

The minutes were reviewed. No corrections were noted.

Ms. Dana made motion to approve the minutes as written. Mr. Barnhart seconded the motion. All were in favor.

### [Old Business](#)

There was none.

### [New Business](#)

Mr. Hollenbaugh announced that the BZA would have a December BZA meeting. Reminder that the December meeting date had been moved up to December 14, 2011. Mr. Hollenbaugh noted there were

two cases.

Mr. Prentice referred to having received an email for BZA-06-2011, and since the BZA is a quasi-judicial board, he strongly asked to not send emails suggesting what we should or should not do. Mr. Prentice asked in the future to send emails to the Planning Director as he refuses to read.

### Adjournment

Mr. Barnhart moved to adjourn the meeting. Mr. Meyer seconded the motion. The meeting was adjourned at 7:46 p.m.