

**CITY OF ANNA MARIA  
CODE ENFORCEMENT BOARD  
NOVEMBER 13, 2006  
7:00 P.M.**

**CALL TO ORDER (7:00 P.M.)**

**ROLL CALL:** Chair William Iseman, Jeff Murray, Shirley O'Day, Carl Pearman, Carol Lewis

**Also present:** Chuck Webb, Attorney for Frank M. Almeda; Code Enforcement Officer Gerry Rathvon

**Press:** Sun, Islander

**APPROVAL OF May 8th, 2006 Minutes**

**MOTION:** Shirley O'Day moved to approve the Code Enforcement Board Meeting Minutes of May 8th, 2006, and Chair William Iseman seconded the motion.

**Vote:** All Ayes. Motion carried.

**OLD BUSINESS**

**NEW BUSINESS**

**1. New Member – Carol Lewis was appointed to the Code Enforcement Board by the Commission at the Regular Commission Meeting on May 25<sup>th</sup>, 2006.**

Chair William Iseman introduced the Board's newest member, Carol Lewis. He indicated that she was enabling the Board to be sitting in its entirety at this evening's meeting, her first as a Code Enforcement Board member.

Chair Iseman reminded those present that the Board continues recruiting efforts for an alternate member. He noted that the Board is entitled to have two alternate members, but has not had any alternates for some time. The Code Enforcement Board Chairperson observed that this was a serious deficiency which the Board was seeking to correct as soon as possible.

**2. Case No. 2006 –016**

The City Clerk swore in those present who wished to speak at this evening's hearing.

Code Enforcement Officer Gerry Rathvon took the floor to present the City's case to the Board. She indicated that the packet now before the Board documented action she had taken since she sent out the Notice of Intent to Inspect on October 12<sup>th</sup>, 2005. Code Enforcement Officer Rathvon reported that she next sent a letter to Frank Almeda at 415 Pine Avenue on January 25<sup>th</sup>, 2006, after she

inspected the property, informing him that while the property was listed with Manatee County as a duplex, she had discovered upon inspection that was instead a fourplex. The Code Enforcement Officer indicated that she had found two downstairs apartments, with people living in both units, as well as a front and rear apartment on the second floor of the building, with a tenant in that rear unit. Her letter requested Mr. Almeda to apply for a building permit and to supply drawings for the entire property. Code Enforcement Officer Rathvon reported that her next action had been to send out a Violation Notice on May 24<sup>th</sup>, 2006, by both regular and certified mail, containing the same instructions as in her January 25<sup>th</sup>, 2006 letter. She acknowledged that the City had received the signed card to confirm receipt of the registered letter.

Code Enforcement Officer Rathvon indicated that on July 20<sup>th</sup>, 2006, she sent an Amended Notice of Violation, both by certified and regular mail, to Mr. Almeda, with a copy to his attorney, sent by regular mail. The Code Enforcement Officer reported that her research had revealed that this property had been constructed as a single-family home, not a duplex. She said that she had been unable to find a building permit or any other document that would justify the structure as a duplex.

The Code Enforcement Officer reported that she had sent a Notice of Hearing, Statement of Violation and Transmittal of Notice to Mr. Almeda, both by certified and regular mail, with a copy sent to the property owner's attorney by regular mail. She acknowledged that the City had received a green card, signed to confirm receipt of the correspondence sent by certified mail. Code Enforcement Officer Rathvon further confirmed that she posted the property on the same day, and had obtained a notarized witness' signature on the certificate of posting.

Code Enforcement Officer Gerry Rathvon referred to the four items that had been listed on the Violation Notice sent to Mr. Almeda, which indicated that:

- a four-unit, multi-family dwelling had been constructed on his property without the benefit of the proper building permits, in violation of Chapter 74, Article I, Building Permits;
- approved site plans were required for the development, according to Chapter 74, Article VIII; rental units required site plan approval, also according to Chapter 74, Article VIII;
- the structure contains four dwelling units, in violation of the ROR district's land use regulations and the City of Anna Maria Code of Ordinances, Division 5;
- the four-unit multi-family dwelling had been constructed without an approved parking plan, in violation of the City of Anna Maria Code of Ordinances, Chapter 90.

Board member Shirley O'Day referred to the third item, and inquired as to the requirements in the ROR zoning district. The Code Enforcement Officer

explained that only single-family residences, offices and retail establishments are permitted in the ROR district. She noted that the City did not have an R-3 zone, which would permit three or more units on a property.

The Code Enforcement Officer, in response to a question from Chair Iseman, indicated that the City first became aware of the violations upon receipt of a written complaint on July 12<sup>th</sup>, 2005.

The Code Enforcement Board Chairperson further inquired if there appeared to have been a recent modification to the structure. Code Enforcement Officer Gerry Rathvon responded that in 1998 the property owner had applied for a variance to modify what Mr. Almeda considered a duplex into a three-unit dwelling. She noted that the Planning & Zoning Board (P&Z) had sent a recommendation to the Commission to deny this variance. Code Enforcement Officer Rathvon noted that the only information from the records that could be provided for the City Commission meeting was that the property had been permitted for a single-family residence. The Commission's determination at that time was that Mr. Almeda would need to apply for a new variance for the structure's current duplex status.

The Code Enforcement Officer confirmed to Shirley O'Day that the property owner did not apply for the duplex variance.

Code Enforcement Officer Gerry Rathvon distributed copies of information to the Board members, including a copy for entry into the record.

Chair William Iseman noted that building permits had been required for the structure that was now a four-plex. He asked what purpose the obtaining of such permits would serve now, given that the structure already existed. Code Enforcement Officer Gerry Rathvon explained that the property owner had been instructed to apply for a building permit to demolish the additions that had converted the property into a four-plex from what had been, according to the County, a duplex. Further research of records in storage had indicated that the property was originally permitted as a single-family structure. Chair Iseman confirmed with the Code Enforcement Officer that the City's requirement would be for the property to be restored to a single-family dwelling, in absence of an application for a variance and completion of due process.

Code Enforcement Officer Rathvon indicated that the various permits applied for on the property over the years had no relation to the conversion of the structure to four-plex status.

Chair Iseman inquired as to any explanation or reasons the property owner may have given to Code Enforcement Officer Rathvon regarding the violations. The Code Enforcement Officer said that Mr. Almeda had only said that he believed

that he owned a duplex property, which, to his understanding in 1998, meant that he could have one unit plus two additional units.

Code Enforcement Officer described the property as a two-story structure with two units in the front and two more in the rear. She noted that all units have separate entrances. The Code Enforcement Officer also indicated that the storage area and shed had been added without application for a permit.

Chair Iseman invited Chuck Webb, attorney for Frank Almeda, to take the floor. He indicated that part of Mr. Almeda's testimony would be that he had removed sinks and stoves in order to come into compliance as a duplex. Chair Iseman noted that the issue appeared to require that the structure be returned to a single-family residence. Mr. Webb asked the City for direction as to whether he should proceed to address the four-plex or the duplex situation.

City Attorney Jim Dye took the floor and acknowledged that the property owner had been charged via the Amended Notice of Violation, for operating a four-unit multi-family dwelling without proper building permits; for conversion of a single-family home into a four-unit multi-family dwelling without site plan approval; for operating rental units without site plan approval; and for operating a four-unit, multi-family dwelling without an approved parking plan. The City Attorney indicated that there was nothing in the charging document relating to changing the structure from a duplex to a four-plex – rather the information submitted showed that the structure had been converted from a single-family dwelling into a four-plex. He noted that the City's policy was not to include remedies in the charging document. The City Attorney said that this information would have been conveyed to the property owner during earlier discussions with the City. City Attorney Dye said that it was only after such discussions fail that a formal hearing is requested. He disagreed with Mr. Webb that taking the property back to a duplex would solve the problem, and disagreed further that the charging document would indicated the same.

City Attorney Dye confirmed to Chair William Iseman that the task before the Board at this evening's meeting was to determine whether the property owner should be found in violation of the City's Code. He noted that in the R-1 zoning district, any other structure other than a single-family dwelling would be in violation.

Shirley O'Day indicated that nothing she had found in the documentation presented to the Board at this evening's meeting showed that the structure had ever been approved as a duplex. City Attorney Dye suggested that the Code Enforcement Officer could most appropriately respond. The City Attorney noted that it would be the property owner's responsibility to bring evidence before the Board that the property was a grandfathered duplex.

Code Enforcement Officer Gerry Rathvon, in response to Shirley O'Day's question, indicated that plans for a duplex had been submitted to the City on October 3<sup>rd</sup>, 1974. She noted that at the time, the second story of the structure was not finished. The Code Enforcement Officer explained that there was a separation on the first floor of the structure that would have allowed the front of the structure to be used as a rental unit. However, when the plans were approved, it was specifically stated on them that the lower front of the property was to be used for recreational room only. Code Enforcement Officer Rathvon said that the only approvals were for a first floor level containing two bedrooms, a bathroom, a kitchen area, and a living room area in the rear of the structure. She stated that toward the front of the structure, the approval was for a bathroom and a recreational room with a porch. The Code Enforcement Officer confirmed to Shirley O'Day that the variance to permit the dwelling as a duplex structure was never applied for.

Attorney Chuck Webb asked Code Enforcement Officer Rathvon what the zoning of the property was in 1974, and she responded that it was C-1. She indicated that City of Anna Maria Ordinance 327 would have allowed a duplex in a C-1 district. The Code Enforcement Officer said that she could not confirm, relative to another question from Mr. Webb, that Ordinance 327 would have also allowed a multi-family dwelling in a C-1 district.

Attorney Webb asked where, on the original building permit, it was indicated what type of dwelling (e.g., single-family, duplex, multi-family) the structure was to be. Code Enforcement Officer Gerry Rathvon confirmed that the building permit did not indicate what type of dwelling it was for.

Chuck Webb confirmed with the Code Enforcement Officer that this was a project that had taken a number of years to complete, and inquired as to whether there was any missing documentation she was aware of. Code Enforcement Officer Rathvon responded in the negative. He asked if any other plans had been submitted for this project. Code Enforcement Officer Rathvon said that she had the original plans, and confirmed that the final approval had been received two years later. Attorney Webb asked if it could be possible that additional plans could have been submitted that were not now in the City's files. The Code Enforcement Officer said that she did not know.

Code Enforcement Officer Gerry Rathvon confirmed to attorney Chuck Webb that if the property owner had applied to use the property as a duplex in 1974, this would have been permitted. Mr. Webb referred to minutes of the City Commission Meeting of December 22<sup>nd</sup>, 1998, second paragraph, where it stated that the P & Z Board's recommendation was that the property should be brought back to Code, based on 1974 conditions. Code Enforcement Officer read this section aloud. Attorney Chuck Webb confirmed that at the time, a duplex would have been a permitted use in the area, and that it was also a permissible, non-conforming use in 1998. Mr. Webb asked for the record to show that City

Attorney Dye was discussing the answers to his questions with the witness. Code Enforcement Officer Rathvon indicated that the City Attorney had advised her that as she had not been at the proceedings, she could only respond relative to what was in the records.

Code Enforcement Officer Rathvon confirmed to attorney Chuck Webb that she had not evaluated whether or not a non-conforming use of the property would be allowed.

Attorney Chuck Webb next requested permission from the Chair for the property owner, Frank Almeda, to approach the podium. Mr. Almeda confirmed for those present that he had applied for a building permit for a duplex at 417 Pine Avenue. He indicated that he had begun construction but ran out of money to complete it, which left the second floor empty. Frank Almeda said that the second floor was later completed on the basis of the first building permit, and confirmed that it had been properly inspected.

Mr. Almeda confirmed that he had received an occupational license from the City of Anna Maria to operate a duplex. He told attorney Chuck Webb that the property had been a duplex from 1978 until three or four years ago. Attorney Webb asked Mr. Almeda what he had done to come into compliance from a four-plex to a duplex. Frank Almeda responded that he removed the sink and two stoves, as instructed.

Chair Bill Iseman noted that Ordinance 355 of June 3<sup>rd</sup>, 1974 setting forth a square footage limitation for a duplex. Frank Almeda informed Chair Iseman that the square footage of his structure was 52.5 ft. x 145 ft. Chuck Webb indicated that this translated into approximately 7,552 sq. ft. in area, and noted that a survey at the beginning of the meeting packet indicated the exact square footage.

City Attorney Dye requested permission from the Chair to question Frank Almeda. He confirmed that the property owner had started out with one unit on the ground floor, and that he finished the upstairs a year or two later. Mr. Almeda explained that he lived upstairs, while his daughter lived downstairs, until approximately four years ago, when she moved out. The property owner indicated that the unit on the ground floor was the same as constructed in 1974, with the addition of a stove and the sink, which were subsequently removed at the instruction of Code Enforcement Officer Gerry Rathvon. Frank Almeda told City Attorney Dye that he had rented to other people than his daughter at one time, but had experienced problems with his two young tenants and lost money. He confirmed to the City Attorney that he had two units on the ground floor, with one unit and a party room upstairs. Noting that he is disabled, Mr. Almeda also said that he had constructed additional entrances and exits for increased safety in case of fire.

Attorney Webb acknowledged that it was stipulated that a multi-unit or tri-plex was not permitted in the zoning district, and stated the subject of the dispute as whether or not a duplex would be allowed. Chair William Iseman confirmed with Chuck Webb that he was basing his position on a grandfathered non-conforming use situation. Attorney Webb noted that a non-conforming use was allowable as long as it existed before the Code changed, and had been continuous since then.

Chair William Iseman asked what it would take to bring the property into compliance as a single-family dwelling. Attorney Chuck Webb said that the City could best answer this question, but that it usually meant the removal of stoves and other such items.

Shirley O'Day asked when the ordinance prohibiting duplexes in the ROR district had been passed. City Attorney Dye responded that the City's zoning code had been adopted after the adoption of the Comprehensive Plan in 1988, therefore the ROR ordinance would have been passed circa 1989.

Shirley O'Day asked Frank Almeda why he did not apply for the variance, as recommended by the Commission in 1998. Attorney Chuck Webb referred to the meeting minutes of December 22<sup>nd</sup>, 1998 that said that the property owner was advised to apply for a variance.

Code Enforcement Officer Gerry Rathvon indicated that the Regular Commission Meeting Minutes of December 22<sup>nd</sup>, 1998, fourth sentence, second paragraph stated that one of the Commissioners said it was his understanding that this was a single-family residence. She quoted, "Robert's feelings were that they would have to reapply for hearings to make the dwelling a duplex." Upon re-examining the minutes, Mr. Webb pointed out that this was not the comment of the Commission, but rather a discussion between Commissioner Macahaney and Phil Charmick, the Building Official.

Jeff Murray asked when the City had started collecting occupational license fees for renting a duplex. Frank Almeda said that he paid these fees for years, until the City suspended these charges.

Attorney Chuck Webb pointed out that City Attorney Dye could act as a prosecutor, but not as an advisor to the Board at the same time. He acknowledged that the City Attorney's role was prosecutor at this hearing. Chair William Iseman noted that occasionally the Board did have its own attorney present, however, not knowing the scope of the case, her presence had not been requested at this hearing.

Attorney Chuck Webb took the floor and indicated that he had been sworn. He noted that it was unusual for attorneys to be sworn, however, he had conducted extensive research on the changes in the City's zoning code. He distributed

copies of documentation he had assembled of a reverse analysis of zoning provisions, without submitting a copy for the Clerk.

Attorney Webb noted that Section 114-131 was the current non-conforming use provision of the Code, which states that if a use was lawful at the time this Code provision was adopted, it could remain as a lawful use. He observed that this could remain in effect until the structure was destroyed (for any reason other than a natural disaster or a non-owner initiated event). Mr. Webb informed those present that Anna Maria had kept such an ordinance in its Code since the 1950's.

Chuck Webb next referred to Ordinance 327, Section 9, in effect in 1974, allowing duplexes in the C-1 district. He then referred to Ordinance 355, which also stated that duplexes were allowed in the C-1 district, and noted that this ordinance also contained a non-conforming land use clause. Mr. Webb next pointed out, on Page 121, a section relating to an ordinance adopted in 1974. Attorney Webb continued a page-by-page review of his documentation. The property owner's attorney pointed out that the original building permit, issued in 1974, did not say whether the allowed structure was to be used as a duplex or a single-family or multi-family structure. He noted that the survey indicated that the area of the property was 7,554.5 sq. ft. Mr. Webb noted that the second entry had been permitted in 1974, and that according to Ordinance 355, a duplex was permitted on a lot measuring a minimum of 7,500 sq. ft.

In conclusion, attorney Chuck Webb said that in 1974, there was no reason why the property owner could not have a duplex on the property, as all the necessary requirements to satisfy existing codes were in place. He said that his position was that the structure was used as a duplex and allowed as a non-conforming use for years with the City's knowledge, until the present day, and that Frank Almeda was entitled to maintain it. Mr. Webb noted that this was the first time that Code Enforcement action had been taken. The attorney confirmed that the Property Appraiser's account, as well as Mr. Almeda's ad valorem tax account, both listed his property as a duplex.

Attorney Chuck Webb confirmed to Chair Iseman that his client maintained two stoves and two sinks on the premises and wished to rent one unit, noting that there was no prohibition on rentals.

City Attorney Jim Dye asked attorney Chuck Webb if, during his research, he had found a formal document from the City authorizing a duplex. Mr. Webb responded in the negative, adding that he did not see anything to indicate that such a document would need to be issued. City Attorney Dye confirmed with attorney Webb that he had found, during review of the 1974 documents, records of discussion during the initial review, that the structure would be a single-family residence. Mr. Webb said that he had found nothing that stated that the structure could only be used as a single-family residence. He said that his interpretation of the 1974 Building Official's notes was that the upper floor was to remain

unfinished and that the building would be a single-family residence. Attorney Webb said that it had always been his client's intention to have a duplex, and that this is what he had done.

City Attorney Dye suggested that, given the policy of defining dwelling units by the number of stoves and sinks, that since only one sink had been approved in 1974, the permit had been issued for a single-family residence. He noted that there had been discussion of a duplex, but no record of a permit for a duplex having been applied for. Chuck Webb indicated that records remained missing at City Hall, giving as an example Ordinance 355. He noted that Mr. Almeda had proceeded to complete his duplex on the basis of the original building permit.

City Attorney Jim Dye asked permission from Chair Iseman to bring Code Enforcement Officer Gerry Rathvon to the podium to answer a few questions. The Code Enforcement Officer confirmed to the City Attorney that upon her inspection, she had found four dwelling units, and described how they were separated from each other, as well as the layout of each unit. She noted that doors connected the front and the rear units, and that these were locked. The Code Enforcement Officer confirmed that there were four kitchens in the structure at the time of her inspection in January 2006.

Chair William Iseman indicated that it was his perception that the Board had a violation before it, and that based on the present Code, even the existence of two dwelling units was a violation. He questioned whether Mr. Almeda's conversion of his four-plex back into a duplex would be a satisfactory remedy. Chair Iseman said he believed that whether or not a duplex would be allowable as a non-conforming use would be a determination the City would need to make. He noted that the Board could only go so far as to determine that there was a violation in this case. Chair Iseman asked City Attorney Dye how the City would be pursuing the violation.

Shirley O'Day summarized her perception of the facts of the case. She asked Frank Almeda when he first started living on his property, and he responded that it was in 1976. Ms. O'Day confirmed with the Code Enforcement Officer that in 1974, duplexes were allowed in the district in which the property is located. Frank Almeda confirmed to Shirley O'Day that the upper floor had been used as a duplex within a year after he first occupied the property.

Chair William Iseman asked City Attorney Dye for any additional comments. The City Attorney said that, based strictly on testimony presented at this evening's meeting, he believed the City had made its case. He noted that in total, there were five violations on the property. The City Attorney explained that Code provisions protecting non-conforming uses did so only as long as that use remained unaltered. He indicated that the property owner abandoned his use as a duplex when he converted the structure into a four-plex. City Attorney Dye said that it would be the property owner's responsibility to show that his property had

been properly built in order to be allowed the benefit of a grandfathering clause. He said that in his opinion, the records do not make the case for a properly built duplex. The City Attorney said that applications and building permits show that one sink was to be installed. He noted that attorney Webb had mentioned possible missing records, noting at the same time that the property owner had been knowingly violating the City's Code by converting his property to a four-plex. City Attorney Dye said that the remedy the City was seeking was for the property to be brought back into compliance, and that would be as a single-family dwelling.

Attorney Chuck Webb indicated that he did not believe that his client abandoned use of his property as a duplex when he converted it into a four-plex. He read aloud portions of the Code relating to non-conforming uses. Mr. Webb said that the City had no ordinance in place in 1974 that an application must be made for a new land use. He noted that Mr. Almeda had always used his property as a duplex, and had never intended it to be a single-family home. He indicated that the property owner's conversion of his property from a four-plex back to a duplex cured the rest of the violations.

Chair William Iseman questioned how attorney Webb could not find that Mr. Almeda abandoned his use of the property as a duplex when he converted it into four units. Attorney Chuck Webb indicated that there had always been two units on the property.

Jeff Murray suggested that Code Enforcement Officer Gerry Rathvon return to inspect the property to verify that it currently was in fact a duplex.

Chair Iseman noted that the Board continued to have a violation before it. Discussion followed relative to the County and the City having continuously taxed the property as a duplex.

Shirley O'Day indicated that she had a problem with Frank Almeda's conversion of his property into a four-plex after he had been denied permission to make it into a triplex.

Code Enforcement Officer Gerry Rathvon indicated that the City was not addressing the illegal sheds and other items not contained in its notice to the property owner.

City Attorney Jim Dye explained to the Board that it could find that a property owner is in violation even if that violation had been cured by the time the case came before a hearing. He noted that the City must spend time and money to bring the case to its current point.

Chair William Iseman said that it appeared to him that the Board should attempt to decide at this evening's meeting whether it had a violation before it, and if so,

to determine an amount of time to allow the property owner to bring the property into compliance. He noted that the City was requesting that the property be brought into compliance with the current Code, which specifies a single-family residence. Chair Iseman said it also had the option of not finding the property owner in violation if it felt that the property now was compliant in its present form as a duplex.

Attorney Chuck Webb reviewed with the Board the documents the City had provided him showing two hot water heaters and two toilets.

**MOTION: Shirley O'Day moved to require the violation at Frank Almeda's property to be brought into compliance with the City's Code. Motion not seconded.**

After discussion, the date before which to come into compliance was determined to be December 5<sup>th</sup>, 2006.

Chair William Iseman requested that the City Attorney draw up a Final Administrative Order for this case. Attorney Webb requested permission to review the Order, and City Attorney Dye had no objection to this request.

**MOTION: Chair William Iseman moved that the Board make a finding of fact that there is a violation of the City codes, as set forth in the present Notice of Violation, and requested the City Attorney to draft a notice of such finding of fact, with the period for compliance to be concluded on December 5<sup>th</sup>, 2006, with an appropriate inspection by the City to occur before that date. Shirley O'Day seconded the motion.**

**Vote: All Ayes. Motion carried.**

The Board took a break at 9:12 p.m. and the meeting resumed at 9:54.

Chair William Iseman reviewed the Final Administrative Order [please see attached] drafted by City Attorney Dye. Attorney Chuck Webb expressed no objections to the Final Administrative Order, as written.

**MOTION: Chair William Iseman moved that the copy of the Final Administrative Order, with its findings of fact and conclusions of law be adopted and approved. Carol Lewis seconded the motion.**

**Vote: All Ayes. Motion carried.**

#### **SET DATE FOR NEXT MEETING**

December 11<sup>th</sup>, 2006 at 7:00 p.m.

#### **PUBLIC COMMENT**

None offered.

**PRESS COMMENT**

None offered.

**ADJOURNMENT**

Chair William Iseman adjourned the meeting at 9:56 p.m.