

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD MAY 27, 2008

Agenda

LOTFI - VARIANCES - FRONTAGE, AREA AND DUPLEX - 7121 WEST MAIN STREET AND VACANT ADJACENT PROPERTY - (PARCEL NOS. 3905-15-430-050 AND 3905-15-430-060)

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, May 27, 2008, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Grace Borgfjord, Chairperson
Dave Bushouse
Duane McClung
Cheri Bell, Alternate
Mike Smith, Alternate

MEMBERS ABSENT: Robert Anderson
Roger Taylor

Also present were Jodi Stefforia, Planning Director; Brian VanDenBrand, Associate Planner; and James W. Porter, Township Attorney. There were no other interested persons.

Call to Order/Pledge of Allegiance

The meeting was called to order at approximately 3:02 p.m., and the Pledge of Allegiance was recited.

Minutes

The Chairperson asked if the members had had an opportunity to review the minutes of April 22, 2008. Mr. McClung then made a motion to approve the minutes as submitted. The motion was seconded by Mr. Smith. The Chairperson called for a vote on the motion, and the motion passed unanimously.

LOTFI - VARIANCES - FRONTAGE, AREA AND DUPLEX - 7121 WEST MAIN STREET AND VACANT ADJACENT PROPERTY - (PARCEL NOS. 3905-15-430-050 AND 3905-15-430-060)

The Chairperson said the next item for consideration was a request from David Lotfi for variances from the minimum frontage and area requirements of Section 66.201 to combine two 66-foot-wide grandfathered parcels into a single, nonconforming parcel. She said the parcels would not satisfy the 200-foot frontage requirement or the 50,000 square foot area requirement, and the variance request was to allow a duplex on the parcel. The Chairperson said that the subject property was located at 7121 West Main Street, Parcel Nos. 3905-15-430-050 and 3905-15-430-060.

The Chairperson asked to hear from the Planning Department. Ms. Stefforia submitted her report to the Zoning Board of Appeals dated May 27, 2008, and the same is incorporated herein by reference.

Ms. Stefforia explained that the applicant obtained the two properties in 1996. She said that the properties were grandfathered as to minimum frontage and area requirements. She stated that the properties are zoned "R-2," but prior to 2003, they were zoned "AG," Agricultural-Rural. Ms. Stefforia pointed out, when the applicant acquired the properties, he had sought out and received a letter from the Township, indicating that duplexes were a permitted use in the Agricultural-Rural District and that the subject property was, at that time, zoned Agricultural-Rural. She said the letter failed to note that the subject property was too small in area and frontage to allow a duplex.

Ms. Stefforia proceeded to take the Board through the standards for approval of a nonuse variance, as more fully set forth in her report. Ms. Stefforia noted that the applicant was not available, but indicated that the applicant had requested that the Board proceed in his absence. Ms. Stefforia said if for some reason the Board was inclined to deny Mr. Lotfi's request, she would ask that the matter be tabled until such time as the applicant could be present.

The Chairperson asked if there were any questions from the Board.

Ms. Bell asked for clarification on the difference between platted and unplatted property.

The Chairperson asked how long this property had been a duplex. The Planning Department did not have an exact estimate, but said it could have been as late as sometime in the 90's. Mr. McClung said it appeared that the applicant had done everything he should do in order to verify that the duplex was a legal use. Ms. Bell asked how this issue came up. Attorney Porter noted that it was a result of a complaint from a tenant of one of the duplex units.

The Chairperson noted that there was no public in attendance to make public comments, and she called for Board deliberations.

Mr. Smith asked how often these situations come up and how should an item like this be treated. Attorney Porter noted that if they went through the criteria, he thought his question would be answered as to how they should respond to the request for variances. Mr. McClung again noted that the applicant was apparently told he could use the property as a duplex. Attorney Porter noted that was certainly a factor which the Board would have to consider.

Mr. Bushouse said that, while the issue of the variances from the Zoning Ordinance were properly before the Board, the Board could not allow noncompliance from the Building Code. He said, even if the variances were granted, the properties would still have to be brought into compliance with the Building Code. Mr. Bushouse said that, based on his past experience, this property was likely a duplex as early as 1978 or 1979.

The Chairperson suggested going through the criteria. The Chairperson read the first criteria:

1. *Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, building or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.*

Mr. Smith said, if the variances were denied, the applicant would still be able to use the property, but only as a single-family dwelling. Mr. McClung said he was not sure it was a reasonable use since it had been used as a duplex and wondered whether the applicant could have legal recourse against the Township. Attorney Porter said that the property owner might very well have a basis for legal recourse for either laches or estoppel based on the letter which he received from the former Planning and Zoning Official. Mr. McClung said he did not believe circumstances similar to this situation happened very often and thought the Board should grant the variances. Mr. Bushouse said he would agree, but only if the building met code.

The Chairperson read the second criteria which reads as follows:

2. *Whether a grant of the variance applied for would do substantial justice to the applicant as well as to the property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.*

The Chairperson said she thought that time was a significant factor in her mind. She said she thought it would do substantial justice to grant the variances based upon

how long the duplex has been in existence. She also noted that it was not through the fault of the applicant that the duplex was either created or continued.

The Chairperson read Criteria #3, which reads as follows:

3. *Whether the problem is unique to the property owner's land or whether it is a problem shared by all others in the district.*

The Chairperson noted that this problem was somewhat unique to the subject property, as well as the changes in the Zoning Ordinance over the years. She said this was a higher density area and thought this was somewhat unique.

The Chairperson read Criteria #4, which reads as follows:

4. *Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.*

The Chairperson said she thought that the Board could grant relief and still observe the spirit of the Ordinance and not endanger public safety or the public welfare. The other members concurred.

The following Criteria #5 was read by the Chairperson:

5. *Whether the problem was self-created.*

Mr. Smith said that the applicant certainly did not create the problem. Mr. McClung agreed.

The Chairperson asked if there was any further discussion or findings of fact. Hearing none, she said she would entertain a motion. Mr. McClung made a motion to grant the frontage, area and duplex variances which were requested for the reasons set forth in the record, providing that the duplex be brought into compliance with the Building Code and the two parcels be combined by a legal, recorded document. Mr. Smith seconded the motion. The Chairperson called for a vote on the motion, and the motion passed 4-to-1 with Ms. Bell in opposition.

Public Comment on Non-Agenda Items

The Chairperson asked if there was any public comment, and hearing none, asked if there was any further business to come before the Board.

Adjournment

Hearing no further business, she adjourned the meeting at approximately 3:30 p.m.

Minutes Prepared:
June 2, 2008

Minutes Approved:
June 24, 2008