

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
December 11, 2008 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: David Artley, Karl Guenther, Rachel Hughes-Nilsson, Albert Robitaille, Charles Martell (alternate), Doris Jackson (alternate)

Members Absent: Karl Freed

City Staff: Pete Eldridge, Project Coordinator; John Kneas, Assistant City Attorney; Deanna Benthin, Recording Secretary

Chair Artley called the meeting to order at 7:00 p.m.

MINUTES

Mr. Guenther, supported by Ms. Hughes-Nilsson moved to approve the minutes of November 13, 2008 as submitted.

Motion approved by voice vote unanimously.

NEW BUSINESS:

PUBLIC HEARINGS: Chair Artley summarized the process and explained the Zoning Board of Appeals public hearing rules of procedures stating that a full board consists of six members and that approval requires four affirmative votes. If only four members are present the applicants would have the option to hold their requests over to the next meeting or present their requests with the hopes of getting all four affirmative votes.

Mr. Guenther read the application for 3301 Lincolnshire Boulevard, CCN# 06-35-230-001:

ZBA# 08-12-25: 3301 Lincolnshire Boulevard: An application for a variance to the Zoning Ordinance has been filed with the Zoning Board of Appeals by Shawn Williamson on behalf of the property owner Lincolnshire Townhouses Cooperative, LLC. The request concerns the property at 3301 Lincolnshire Boulevard, which is situated in Zone RM-15, (Residential – Multi Dwelling District). The request, if approved, would authorize a dimensional variance from Chapter 5, Section 5.1, to allow a 1,268 square foot maintenance building expansion, which will be located five feet from the east rear property line. Where the RM-15 District requires a building setback of twenty feet from the rear property line.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were forty notices of public hearing sent and zero responses were received.

Shawn Williamson, 10399 Tomkinson Rd., Scotts, was present on behalf of Lincolnshire Townhouses LLC. He stated they were requesting a variance for the setback dimension on a proposed addition to the existing maintenance garage. The required setback of 20 ft. applies to occupied dwellings and would not be required if there was not a leasing office in the existing building with the maintenance facility. The requested variance of five foot would comply with ordinances if the garage were a stand alone structure and would reduce traffic near the property line. The proposed addition would not increase the existing traffic; the addition is needed to allow Lincolnshire's maintenance crew to operate more efficiently and effectively. There is natural vegetation that screens the property line.

Karl Guenther questioned the existence of the brick shed. Mr. Williamson stated it would be demolished. Ms. Hughes-Nilsson questioned what would be stored in the new shed. Mr. Williams replied items for the maintenance facility, tools, appliances, cabinetry and items required for maintenance. Ms. Hughes-Nilsson questioned if lawn mowers and snow blowers would be stored inside. Mr. Williamson replied no.

Jeff Cretsinger, 715 Rockford St., Portage, maintenance supervisor for Lincolnshire Townhouses stated the garage would have hand tools, power tools, refrigerators, appliances, bath tubs, toilets, any type of main fixture for the homes.

Ms. Hughes-Nilsson questioned if the building was just for storage or if they would be working on the appliances in the structure. Mr. Cretsinger stated it was mainly for storage.

Mr. Eldridge questioned if there were windows or doors on the side of the building five feet from the property line. Mr. Cretsinger replied no.

There were no comments from the public.
Chair Artley closed the public hearing.

FINDING OF FACT

Mr. Martell moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3301 Lincolnshire Boulevard shall include all information included in the notice of public hearing dated November 26, 2008.
- 2.) Forty notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.

- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, including a 300 ft mailing boundary and an aerial photograph.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Shawn Williamson spoke on behalf of Lincolnshire Townhouses, LLC., stating he's requesting a dimensional variance from Chapter 5, Section 5.1, to allow a 1,268 square foot maintenance building expansion, which will be located five feet from the east rear property line. This zoning district requires a building setback of twenty feet from the rear property line. Mr. Williamson indicated he didn't believe there would be any increase in traffic and this would help with the maintenance of the buildings, indicating there's a natural barrier there. The existing brick structure there is to be demolished and if granted this variance would allow for a new garage to store tools, power tools, appliances, maintenance fixtures and other items. Jeff Cretsinger the maintenance supervisor spoke in favor and indicated there would be no doors or windows on the side nearest the adjoining property.

Mr. Robitaille supported the Finding of Fact.

Motion approved for the Finding of Fact by voice vote unanimously.

Mr. Robitaille moved to approve the application, supported by Ms. Hughes-Nilsson.

Mr. Robitaille stated the facts speak for themselves, the building is tucked way in the back and will not be a visual or traffic impedance and would support the function of the property managers. Ms. Hughes-Nilsson stated she understood the need for the shed, but there are several guidelines needed to be met prior to issuing a variance. The first stipulation that there are special circumstances or conditions on the site that are peculiar to that site; she doesn't see how that is being met. The special circumstances are the result of the applicant and it may not affect the adjacent land in a material way, because there's a natural buffer. By not meeting these conditions she doesn't see how the Board could grant the variance, stating she would be voting no.

Mr. Guenther stated he visited the site stating there is plenty of room to expand the building to within five feet of the property line without imposing on the neighboring property. The granting of the variance would be in the spirit of the ordinance. It wouldn't be a problem for the neighbors or the City and would be a benefit to the applicant. He stated he would be voting in favor of it.

Ms. Jackson questioned if the City would have any recourse if they would use the building for something other than for storage, such as repair work after it is up. Mr. Eldridge replied the record shows the intended uses, there could be a condition placed on the motion to approve that limits the use. There have been miscellaneous comments made about some repair work

that would be done inside of this building. Mr. Eldridge stated the Board should probably clarify it for the motion.

Ms. Jackson commented five years down the road they could be repairing items within the building and she hopes, if approved, that it would only be used for the intended purpose stated in the original request.

Ms. Jackson made a motion to amend the motion, supported by Mr. Robitaille. Mr. Robitaille commented if limited to the stated purpose of maintenance, storage and light repair he would vote in favor of the request.

The amended motion was approved by voice vote to include the stipulation that the building be used only for the purposes as specified in the request and stated at the meeting.

Yes: Robitaille, Martell, Guenther, Jackson

No: Hughes-Nilsson, Artley

Motion approved by roll call vote.

Mr. Guenther read the application for 1228 Reed Street, CCN# 06-26-126-656:

ZBA# 08-12-26: 1228 Reed Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Ryan Storey, the property owner. The request concerns the property at 1228 Reed Street, which is situated in Zone RS-5 (Residential – Single Dwelling District). The request, if approved, would authorize a use variance from Chapter 4, Section 4.1, to allow the second dwelling unit in this structure to be reoccupied, where only one dwelling unit is permitted per lot in the RS-5 District.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were eighty-six notices of public hearing sent and zero responses were received. Informally the Board received commentary from Mr. Karl Freed in regards to this application. This letter is not from a resident within 300 feet of the subject property.

Ryan Storey, 724 Rutledge, Grand Rapids, was the applicant for the variance, stating he purchased the property in late 2005. Mr. Storey commented he refinanced his home to purchase this home as an income property or to sell. The market as it is would be a losing issue. He tried to rent it out, it was a foreclosure listed as a duplex, and he only did cosmetic work to it. The house already had separate utilities and the downstairs unit was finished. The electrical was already separated which lead him to believe it was a duplex. Mr. Storey stated this was his first property purchase and selling it would be a huge loss and not an option for him. He currently has two tenants and was unaware there was a problem. He purchased the property for \$27,000 and worked on the house for two years prior to renting it out since July. Mr. Storey then received a letter notifying him it wasn't city certified, it needed a rental registration and inspection done, and his paperwork was denied, due to the zoning. Mr. Storey stated he purchased the property from the bank as a duplex stating there are delinquent taxes

due. If zoned as a duplex he can make an income and pay the taxes, recouping some of his finances. He wants to keep his tenants there.

Chair Artley stated this is a use variance the Board is being asked to consider, not a change in zoning. Mr. Storey questioned the meaning of a variance. Chair Artley explained the zoning will not change, he would be allowed to do what he wants to do with the property, having a second dwelling. Mr. Storey stated he felt used by the local bank and the listing was a duplex and prior to three weeks ago he was unaware there was a problem. Chair Artley questioned if the bank notified him that it was registered and he could use it as a duplex. Mr. Storey stated the listing stated it was a duplex, he didn't recall actually reading it.

Mr. Robitaille questioned if he knew the property was previously used as a duplex. Mr. Storey stated the previous owners removed the interior stairway and placed the stairwell on the outside. Mr. Storey stated there were separate furnaces, stairs, appliances, the only thing he did was install new meters.

Mr. Robitaille questioned if the property was certified as a duplex. Mr. Eldridge replied it was used as a duplex the property owner failed to re-certify it, and then submitted a letter dated Feb. 28, 2005 stating it was owner occupied, if they decided to rent it they would call the office and get it inspected. Mr. Eldridge stated it was taken off the rental registration records and indicated it was owner occupied. Mr. Storey purchased it Dec. 20, 2005. From February to December it was owner occupied. Mr. Robitaille commented the owner probably wasn't aware he was disqualifying the property as a duplex by announcing it was owner occupied for awhile. Mr. Eldridge agreed.

Attorney Kneas questioned if it would have been a permitted use before the zoning change as a duplex. Mr. Eldridge replied no, it's zoned part of the single zoning district, one dwelling per lot or parcel. He stated directly across the street on Reed St. it's in the duplex zoning district. Attorney Kneas questioned if it had a variance prior or if it was certified as a duplex without it being permitted as a duplex. Mr. Eldridge clarified it was grandfathered in as a duplex.

There were no comments from the public.
Chair Artley closed the public hearing.

FINDING OF FACT

Ms. Hughes-Nilsson moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1228 Reed Street shall include all information included in the notice of public hearing dated November 26, 2008.
- 2.) Eighty-six notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.

- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, aerial photographs, and photographs of the existing structure.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Mr. Ryan Storey owner purchased the property in 2005 to fix it up to either rent or sell. Selling is not an option in the current market, he purchased the property as a foreclosure as a duplex. He stated it only needed cosmetic fixtures at that point; all the utilities and entrances were already separated. The downstairs apartment had already been completed. Mr. Storey is currently renting out to two tenants and recently found out of the violations for the duplex when he tried to file the rental registration with the city. He was told at the purchase that it was city certified but did not verify this, he's been renting the property since July 2008; he tried to file the rental registration with the city, it was denied due to the zoning issues. Mr. Storey stated he had plans if he can continue to rent to both tenants to pay back taxes and would like the building variance for the duplex to get back his investment and pay the back taxes. Mr. Robitaille asked if the property was ever used as a duplex, yes, all the utilities and entrances are separate. The owner only separated the meters in order to turn on the utilities after he purchased the property. Mr. Robitaille also asked if there was any certification by the city. Mr. Eldridge stated yes, previous property owner submitted a letter in 2005 stating that it was going to be owner occupied and he would contact the city if he planned to rent it out as a duplex in the future. The city then in receipt of that letter took the property off the rental registration list for duplexes. Mr. Robitaille stated that the previous owner might not have realized he was disqualifying the property with that letter. Attorney Kneas asked if this was a permitted use with the previous zoning. Mr. Eldridge stated no, although the multifamily zoning is located across the street. Attorney Kneas questioned if the property previously had a variance and Mr. Eldridge replied no it had been grandfathered in previously.

Mr. Guenther supported the Finding of Fact.

Chair Artley questioned Attorney Kneas if the variance was granted and then the house goes vacant, is the variance then lost. Attorney Kneas replied if the variance continues it would have to be vacant or abandoned for at least one year to lose the variance.

Ms. Jackson asked for clarification, if no one was living in the house for a year or more. Mr. Storey had stated it was empty for two years. Attorney Kneas replied if a person is still attempting to rent, sell or use it as a rental property, and the intent is not abandoned to use it as a duplex then the one year doesn't automatically disqualify them. Ms. Jackson asked where the stair steps were when he purchased the house. Mr. Storey replied the steps had already been moved when he purchased the property.

Mr. Robitaille questioned if the property would revert after one year of abandonment or non use as a duplex, does that mean the city prematurely took the property off the list as a duplex. Attorney Kneas stated the letter came from the prior owner when their time was coming up to recertify the property, to avoid that he indicated to city staff that it was no longer a rental property so it would no longer need to be certified. When Mr. Storey bought it after it'd been vacant for almost three years the question was the Board needs to decide is if it was a true abandonment. If the original owner stayed there from now until he'd wrote the letter that would have been a clearer issue.

Motion approved for the Finding of Fact by voice vote unanimously.

Mr. Guenther moved to approve the application, supported by Mr. Robitaille.

Mr. Guenther stated he hoped the Board could come to an arraignment so Mr. Storey could retain the ownership and duplex designation and he could gain some financial stability. The real estate market is at the bottom and Mr. Storey couldn't even try to get out the situation by selling it. He'd be in favor of granting the variance.

Mr. Martell stated the fact the property had been used as a duplex for years along with other duplexes in the immediate area could have lead to Mr. Storey's mistakes. The Board isn't to look at the financial impact; Mr. Storey agreed he made mistakes. Mr. Martell commented he didn't see how this would negatively impact the neighborhood, but if it were denied another foreclosed or vacant property could. He stated he'd be voting in favor of the request.

Ms. Jackson questioned if Mr. Storey obtained any permits while working on the house. Mr. Storey stated most of the work he did was cosmetic and didn't require permits other than the electrical which Consumers Energy did. Ms. Jackson questioned where the tenants parked their cars. Mr. Storey stated they are one unit apartments and there's a garage where a car can be stored, the tenants agreed to have only one vehicle. They work out the parking with the other tenants and neighbors and haven't had any parking issues.

Ms. Jackson questioned if the car parked in front of the garage runs. Mr. Storey stated the vehicle runs; it belongs to a tenant who has it for sale to comply with his wish to have only one vehicle.

Mr. Martell questioned if there were two furnaces. Mr. Storey replied yes. Mr. Eldridge clarified both furnaces were there when he purchased the house. Mr. Guenther questioned if on street parking was available in the 1200 block of Reed Street. Mr. Eldridge replied no, he didn't see any signs present.

Ms. Hughes-Nilsson stated that conditions needed to be met to qualify for a variance. The Edison Neighborhood has made an effort to try to get rid of the duplexes in the area in an attempt to return it to a single family neighborhood. The conditions haven't all been met, she feels for the owner, but the Board should honor the efforts of the Edison neighborhood. She stated she would be voting against the request.

Mr. Martell commented out of the 86 notices there were no replies.

Chair Artley commented he also felt for the owner stating the seller had to have been aware of the situation and gave bad information. However, he agrees with Ms. Hughes-Nilsson and stated he would be voting against the request too.

Yes: Guenther, Martell, Robitaille
No: Artley, Hughes-Nilsson, Jackson

Motion denied by roll call vote.

Mr. Eldridge commented on the recommendation to fill the vacated seat of Tom Stolz. Mr. Martell was contacted and offered the position but chose to remain an alternate. Ms. Jackson accepted the offer to become a permanent member. This would be forwarded to the City Commission.

Mr. Guenther made a recommendation to nominate Ms. Jackson in the vacated seat of Tom Stolz, seconded by Mr. Martell.

Ms. Jackson questioned the length of term. Mr. Eldridge replied the expiration is April 31, 2010. Ms. Jackson said she accepted.

Motion approved by voice vote unanimously.

Mr. Eldridge commented he had one applicant for the vacant alternate seat. Normally he, Chair Artley and a couple volunteer board members go on a lunch interview with the candidate. It's an informal meeting with the applicant to see what their qualifications are and time for the candidate to ask questions also. Ms. Hughes-Nilsson and Mr. Guenther volunteered to attend.

Chair Artley thanked all the Board Members for their time and commitment and welcomed Ms. Jackson.

ADJOURNMENT

The meeting was adjourned at 8:02 p.m.

Submitted By _____ **Date** _____

Reviewed By _____ **Date** _____

Approved By _____ **Date** _____