

**MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
December 15, 2009**

The meeting was called to order by Chairman Randy Horton at 9:35 a.m.

Roll call was taken by Recording Secretary, Marty Stinson.

MEMBERS PRESENT: Elizabeth Frasier, Sandra Harvey, and Randy Horton.

MEMBERS ABSENT: Christopher Eveleth, Dan Jozwiak (called in).

OTHERS PRESENT: Brent Morgan, Director of Economic Development & Neighborhood Services;
Carmine Avantini, LSL Planning, Inc.

MINUTES:

It was moved by Board Member Harvey and supported by Board Member Frasier to approve the minutes of the meeting of October 20, 2009, as presented.

AYES: All. Motion carried.

NAYS: None.

VARIANCE REQUEST:

Case # 2009-06
634 Martin St.
Requested by Jean Arnett
Lot Split

Ms. Jean Arnett spoke on her request to split the lot at 634 Martin Street so that she could leave the west 150 feet that faces Ash Street with an unattached garage to her son, while leaving the east portion that faces Martin Street to another child. The unattached garage is used for storage right now. The east portion has her house and attached garage on it.

Lot 14 to the north of Mrs. Arnett's property is split. This was confirmed with record cards from Assessing. Mr. Avantini commented that an improved road is required to have access to build a house on Ash Street. He also stated that the two western lots portions of Lot 13 and 14 could be consolidated to make a legal lot, but it's premature to split the requested lot off now.

Mr. Avantini reviewed the basic and special conditions from his letter dated November 30, 2009.

Board of Appeals
City of Owosso
301 West Main Street
Owosso, MI 48867

Subject: Variance Request - Jean Arnett
Applicant: Jean Arnett
634 Martin Street

Dear Board of Appeals Members:

We have reviewed the above referenced variance application and offer the following comments.

Background

The applicant has proposed splitting Lot 13 in Block 9. Lot 13 is a through lot with frontage on Ash Street and Martin Street. An existing detached garage is located on the lot that would front onto Ash Street and an existing single family dwelling is located on the lot that would front onto Martin Street.

Proposed Variances

The applicant is requesting the following:

The property is zoned R-1, One-Family Residential. The R-1 district permits a one-family dwelling and accessory buildings provided they are on the same lot. The applicant is requesting a variance from Section 38-52 so that the accessory garage can be located on a lot that does not include a one-family dwelling.

REVIEW STANDARDS AND ANALYSIS

Section 58-504 (c) of the Owosso Zoning Ordinance states that the Board of Appeals may grant a variance "provided all of the basic conditions listed herein and any one (1) of the special conditions listed thereafter can be satisfied." In this regard, the applicant must demonstrate all of the following basic conditions:

Basic Conditions

1. *Will not be contrary to the public interest or to the intent and purpose of this chapter;*

Accessory garages on a single family residential property are used for parking of vehicles and storage by residents of the dwelling. Allowing a lot to only have an accessory garage could create a situation that would be contrary to the public interest. The purchaser of such a lot may not have immediate plans for the construction of a dwelling. In such a case, the garage could potentially be used or rented for storage, automobile repair or other activities that could create impacts on nearby properties.

2. *Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required;*

The proposed variance would allow a use that is not permitted by right in the R-1 district. Buildings that are accessory to a single family dwelling, such as a detached garage, are permitted provided they are incidental to the dwelling.

Section 3-5 of the City's zoning ordinance defines an accessory building as a "building detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or use." The applicant's dwelling is the principal building and the garage is incidental and subordinate to the dwelling. The zoning ordinance does not permit a building that is typically used as an accessory building to be on a lot unless there is already a principle use on the lot.

3. *Is one that is unique and not shared with other property owners;*

The subject property is not unique. There are other through lots in the immediate vicinity. Allowing the creation of a lot that is occupied by an accessory building could result in other property owners to seek the same right.

4. *Will relate only to property that is under control of the applicant;* The

proposed variance is related only to the applicant's property.

5. *Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;*

The proposed variance is not required for the applicant to enjoy a reasonable use of the property. The existing dwelling and its accessory building(s) are the uses typically found on property zoned for low density residential purposes.

6. *Was not created by action of the applicant (i.e. that it was not self-created);*

The proposed variance is related to a self-created situation. The proposed lot split, and creation of a lot occupied only by an accessory building, is preferred by the applicant. Additionally, the applicant may be responsible for constructing the garage on land which is now proposed as a new lot.

7. *Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety;*

The proposed variance would not likely create the impacts associated with this criteria.

8. *Will not cause a substantial adverse effect upon property values inside the immediate vicinity or in the district in which the property of the applicant is located;*

Allowing the garage to be located on a separate lot would not create an immediate substantial effect on property values, however use of the garage for activities noted in the response to condition #1 could adversely impact property values in the immediate area. Additionally, the garage could fall into disrepair if it was no longer maintained by the applicant and/or a dwelling was not constructed in the near future. Such a situation could adversely affect property values in the immediate area.

9. *Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, 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.*

Granting the proposed variance would not do substantial justice to the applicant. As noted earlier, the variance is not needed for the applicant to enjoy a reasonable use of the property.

There is no lesser relaxation that could be considered in relation to the proposed variance.

Special conditions

1. *Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land;*

There are no practical difficulties or hardships that would necessitate the proposed variance. The applicant's property is currently being used in conformance with the intent of the zoning ordinance.

2. *Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district,*

While the property's frontage on two (2) streets does not generally apply to other properties, there are other residential properties in the immediate vicinity that share this characteristic. The subject property's shape and physical conditions are not exceptional or extraordinary.

3. *Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.*

The proposed variances are not needed to preserve a property right that is possessed by other properties in the R-1 district. Other properties in the R-1 district are occupied by a dwelling and accessory building(s). The applicant's requested variances would provide additional property rights that are not generally possessed by other properties.

RECOMMENDATION

The applicant has not provided satisfactory evidence that the requested variance is justified. Granting the variance would be contrary to the zoning ordinance's intent of requiring a dwelling before an accessory building may be established. Allowing an accessory building to be the sole use of a residential property could potentially lead to some of the impacts noted in our report and would result in the underutilization of property in a neighborhood. In addition, the request for a variance is based upon personal circumstances rather than the unique condition of the property. We recommend that the requested variance be denied.

Sincerely,

LSL Planning

Carmine Avantini, AICP
Partner

Rob Nesbitt, AICP
Senior Planner

The public hearing was closed by Chairman Horton.

Motion by Board Member Harvey, supported by Board Member Frasier to deny the variance request.

Mr. Avantini reminded the board that having all five members present was a recommendation and that the matter could be tabled until the next meeting in January. Chairman Horton polled the members in attendance. Board Member Harvey stated that because of the language of the city ordinances that she didn't see how the variance could be passed. Board Member Frasier agreed for the same reason. Chairman Horton also agreed. This request doesn't meet the standards of a variance. An accessory building would stand alone on a lot and we don't allow that in our ordinance.

Chairman Horton asked Ms. Arnett if she wanted the board to vote or to table the item.

Ms. Arnett stated that the whole board was against it, but she requested it to be tabled.

Motion by Board Member Harvey, supported by Board Member Frasier to rescind the previous motion.

AYES: All. Motion carried.

NAYS: None.

Motion by Board Member Harvey, supported by Board Member Frasier to table the request for a variance at 634 Martin Street until the next regular meeting on January 19, 2010 when five members can be in attendance.

AYES: All. Motion carried.
NAYS: None.

It was determined that Ms. Arnett will not have to pay an additional variance application fee, and that a second mailing and meeting notification will be done.

ADJOURNMENT:

The meeting was adjourned at 10:14 a.m.

Marty Stinson, Acting Secretary