

Zoning Commission Meeting
Wednesday, April 8, 2009
~ WORKING MEETING NOTES ~

The working meeting was called to order at 6:00 p.m.

Roll Call was taken. Board members present: Walt Lange, Joe Kahl, Sally Wylie, Jim McConkey, Bob Westmark-absent

Guests: Scott Haselman, Fulton Co. Prosecutor and Gregg Winseman, Board of Zoning Appeals

Employees present: Christine Lauch, Administrative Assistant

Trustees present: Jim Leu & Ron Holdeman

The working meeting was called to discuss the nonconforming uses and structures, review pond requirements and agricultural use of structure regulations, requirements for a permit, and fee for the permit application.

NONCONFORMING USES & STRUCTURES

The board members of the Zoning Commission, Trustees, and Gregg Winseman of Zoning Appeals discussed nonconforming uses and structures extensively with the Fulton County Prosecutor, Scott Haselman.

Mr. Lange explained the issue with requiring a nonconforming validation certificate when it was constructed prior to the zoning district or prior to the zoning classifications.

Mr. Lange explained that requiring and charging a parcel owner for a nonconforming validation certificate for their property that became a "non conforming use" because of changes in the zoning code seemed to be a bit unfair to the property owner.

For example, a duplex that was built in the 1960's conformed to the township zoning code of the 60's that only had a residential and commercial zoning districts. These structures were built conforming to a residential district, however, since then, amendments have been made to the zoning resolution are now nonconforming because they are not located in an R1 district. The township currently does not have any R1 districts. The board members discussed how these situations could be "grandfathered".

Trustee Leu pointed out that the resolution says the township was to have a list of all nonconforming uses and structures, however, the list was never provided when zoning was implemented in the zoned areas.

Per Article 100-6.7 After the adoption of this resolution, or any amendments thereto, the Zoning Inspector shall prepare a record of all known nonconforming uses and occupants of land, buildings, and structures, including tents and mobile homes, existing at the time of such resolution or amendment. Such record shall contain the names and addresses of the owners of record of such nonconforming use and of any occupant, other than the owner, the legal description of the land, and the nature and extent of use. Such list shall be available at all times in the office of the Township Zoning Ins After the adoption of this resolution, or any amendments thereto, the Zoning Inspector shall prepare a record of all known nonconforming uses and occupants of land, buildings, and structures, including tents and mobile homes, existing at the time of such resolution or amendment. Such record shall contain the names and addresses of the owners of record of such nonconforming use and of any occupant, other than the owner, the legal description of the land, and the nature and extent of use. Such list shall be available at all times in the office of the Township Zoning Inspector.

The board members and Mr. Haselman discussed and agreed that it would be very difficult to go back from 1958 and construct a list now.

The discussion then turned to amending the zoning resolution to give the zoning inspector the ability not to have to find these situations in violation or enforce the required annual validation certificate. The \$30.00 yearly fee was discussed. Mr. Haselman asked what the fee was for. Chris stated it was for administrative costs, as well as Mr. Hallett's site inspections to ensure there are no changes.

Mr. Haselman stated that the language of the zoning resolution is the discretion of the zoning board and the Trustees. If the board members feel an amendment should be made, the prosecutor can give his

opinion as to the language, however, ultimately, it is up to them if they want or do not want something regulated. Chris explained that Mr. Hallett is requesting the zoning language be amended, per his letter to the board (attached).

The board members agreed that there are numerous nonconforming situations; pretty much most of township could be considered nonconforming.

Trustee Holdeman said the zoning inspector is not supposed to be driving around finding these types of situations. Trustee Leu and Trustee Holdeman stated that regulation should be on a complaint basis or even when a new zoning permit application is submitted basis.

Mrs. Wylie stated if there is no harm to general welfare or to public, there should not be an issue. She asked Chris what would happen now if they tried to pull a zoning permit and found it to be a nonconforming situation. Chris said the zoning permit would be denied and then it could be referred to the Board of Zoning Appeals. Nonconforming issues are not allowed to be enlarged.

Per Article 106.1: Nonconforming uses are declared by this resolution to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this resolution by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, the nature of which would be prohibited in the district involved.

Mr. Haselman will research the regulation on a complaint basis and upon a new zoning permit application basis and get his legal opinion to the township. Once the township receives it Chris will check with Steve Brown, Fulton County Regional Planning Commission, to look into language suggestions. Trustee Leu and Trustee Holdeman support eliminating the fees.

Jim McConkey of Peaceful Valley, also a zoning board member, spoke of the lack of acreage and talked about leach fields encroaching on other parcels. He wants it rezoned to R1 to become more conforming.

There was discussion of instances of fires or destruction of a nonconforming structure and having the ability to rebuild. Mr. Haselman stated the use cannot be changed because it depends on what is being changed and for what use.

Sally Wylie asked when does zoning apply? Isn't it when it was zoned for new permits only, not if built before area was zoned.

The zoning resolution states in Article 106-7: At any time after the adoption of this resolution should the Township become aware of a nonconforming use, the owner of said nonconforming use shall be notified by the Zoning Inspector of the provisions of this section that his property constitutes a nonconforming use. Within thirty (30) days after receipt of said notice, the owner shall apply for and be issued a Validation Certificate for the nonconforming use. The application of such certificate shall designate the location, nature, and extent of the nonconforming use and such other details as may be necessary for the issuance of the Validation Certificate.

Pond nonconforming issues were discussed. Bob Westmark asked via a phone message if his pond would now be considered nonconforming since the zoning language for ponds has been amended, if so, what would he need to do to make it conforming.

Mr. Kahl stated these situations may be detrimental to neighboring properties.

Mr. Haselman stated from a legal issue, if the board were to place the word "grandfathered" in the resolution and the nonconforming is causing issues now, it gives the ability of a loop hole for several articles and will eliminate many regulations implemented now. Also, the word "grandfathered" could undo a lot of amendments that have been made. Mr. Haselman also explained the property owner's vested rights.

Sally Wylie asked if there are degrees of nonconforming issues. Mr. Haselman said a noncompliance is a noncompliance. The board needs to identify a baseline.

PONDS

Trustee Leu wants new pond applications to be accompanied with a site plan stamped by a state of Ohio registered engineer due to the overflow issues. He does not feel it is the responsibility of the County Engineer to construct site plans, nor does he feel Mr. Hallett is qualified to do it. Pond constructions need a suitable outlet that is not roadside drainage.

The board members discussed possible language and will discuss a proposed amendment to Article 100-8.2 #10 Area and Design Requirements:

*In accordance with following requirements, a site plan **stamped by a professional engineer registered with the State of Ohio** shall be submitted **with the pond permit application.***

Also, an addition of the following, which is on the proposed pond permit application:

The contractor is also responsible for proper traffic control at the site and must keep all pavement surfaces clean and free of mud and debris.

The proposed pond application will also have the requirement of a site plan by an engineer registered in the State of Ohio on the bottom of the form. The Board of Trustees to assess the permit fee.

AGRICULTURAL EXEMPTION

The board members talked about Walt Hallett's requests for legal opinions for agricultural use regulations and the legal opinions received (attached), as well as requiring an agricultural exempt zoning permit application and the fee for it.

Article 100-5.2 (# 5) states *that this resolution does not confer any power on the Board of Township Trustees to prohibit the use of any land for agricultural purposes or the construction of accessory buildings.*

This article does not say that a zoning permit is not required.

The township received a legal opinion #07-22 refers to Article 10-20.94 of the zoning resolution

Schedule of Fees, Charges and Expenses

Ohio Revised Code does not prohibit a fee assessment. The fee was adopted by the Trustees for administrative costs and Zoning Inspector site inspections. Mr. Haselman said the fees should be listed.

Mr. Haselman stated that agricultural purposes can not be prohibited, however, only agricultural uses on lots five acres and larger can not be regulated.

One lot, one bldg.

Sally Wylie inquired about the Article 100-5.6 One Lot, One Building:

Every building hereafter erected or structurally altered shall be located on a lot and in no case shall there be more than one (1) main building and the customary accessory building on one (1) lot as otherwise provided, in conforming with the provisions of this resolution.

When Mrs. Wylie asked Mr. Hallett about this article he referred her to Article 100-8.1 maximum lot coverage. Mr. Haselman stated the lot coverage would only apply to the size of ONE outbuilding due to Article 100-5.6. The resolution should be changed if the township does not wish to enforce only one accessory building. The board agreed. Walt Lange said we need to add "**S**" on the end of building in the article.

The Board initialed the 2-11-09 working meeting notes.

Adjourn: 8:06 p.m.