

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD JANUARY 22, 2008

Agenda

PERRIN - SETBACK VARIANCE - 1235 LISA DRIVE - (PARCEL NO. 3905-18-282-070)

KALAMAZOO POOL - SITE PLAN AMENDMENT TO PERMIT REVISED SIDING - 3357 SOUTH 9TH STREET - (PARCEL NO. 3905-35-205-191)

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, January 22, 2008, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

MEMBER ABSENT: Roger Taylor

Also present were Mary Lynn Bugge, Senior Planner; Brian VanDenBrand, Associate Planner; James W. Porter, Township Attorney; and two other interested persons.

Call to Order

The meeting was called to order by the Chairperson at 3:00 p.m.

Ms. Bugge requested that a site plan amendment request by Kalamazoo Pool be considered under "Other Business" and be reviewed as Item #5 on the Agenda, to which the Board members agreed.

Elect Officers

The Chairperson said the first item of business was the election of officers. Mr. Smith made a motion to elect Grace Borgfjord as the Chairperson of the Zoning Board of Appeals. The motion was seconded by Ms. Bell. The Chairperson asked if there were any further nominations. Hearing none, she closed the nominations and called for a vote on the motion. The motion passed unanimously.

The Chairperson indicated that they needed to select a Vice Chair in case of her absence. Dave Bushouse moved to appoint Duane McClung as Vice Chairman of the Board to serve in the absence of the Chairperson. Mr. Smith seconded the motion. The Chairperson asked if there were any other nominees. Hearing none, she closed the nominations and called for a vote on the motion. The motion passed unanimously.

Minutes

The Chairperson asked if the Board members had had a chance to review the minutes of December 18, 2007. Mr. McClung made a motion to approve the minutes as submitted. The motion was seconded by Mr. Anderson. The Chairperson called for a vote on the motion, and the motion passed unanimously.

PERRIN - SETBACK VARIANCE - 1235 LISA DRIVE - (PARCEL NO. 3905-18-282-070)

The Chairperson said the next item for consideration was a setback variance being requested by Daniel Perrin for an addition to his garage at 1235 Lisa Drive, Parcel No. 3905-18-282-070. The Chairperson asked for a report from the Planning Department. Mr. VanDenBrand submitted his report to the Board dated January 22, 2008, and the same is incorporated herein by reference.

Mr. VanDenBrand explained that Mr. Perrin was seeking to add a 16' x 22' third stall to his garage and wanted a variance to allow the garage to protrude five feet into the required 10-foot side setback to the south. Mr. VanDenBrand then took the Board through the standards for approval of a non-use variance as more fully set forth in his report.

The Chairperson asked if there were any questions of Mr. VanDenBrand. Hearing none, she asked to hear from the applicant. Mr. Mark Pulver, the builder for Mr. Perrin, introduced himself to the Zoning Board of Appeals. He explained that the only unique circumstances that he could see was the existing cul-de-sac and the inability to add on to the garage to the east, and because of that, he thought a variance was warranted.

The Chairperson asked Mr. Pulver if the addition would look the same as the house. Mr. Pulver said the addition would match the house exactly with wood siding and the standard frame-built construction.

The Chairperson asked if there were any public comments. Hearing none, she called for Board discussion.

Mr. Smith said he had mixed emotions. He said he would hate to set an adverse precedent, and he also noted that the applicant could expand at least 11 feet before the addition would intrude into the setback area. Therefore, he did not believe the applicant was prevented from using his property as he did have other options. Mr. McClung asked where the applicant could add on. Mr. Smith pointed out that he could add an 11-foot extension to the south before encroaching into the required setback.

The Chairperson said she had to agree with Mr. Smith. She said that a five-foot reduction on a 10-foot setback was significant. Mr. Pulver said that the building would actually be 6.7 feet from the property line. Therefore, the requested setback variance of five feet could be reduced. Ms. Bugge indicated that the setback was based on the overhang. Mr. Pulver said he understood that, and that the overhang would only be one foot, meaning that they would still be approximately 6 ½ feet from the line, thereby only requiring a 3½-foot variance.

Mr. VanDenBrand pointed out that no survey had been done yet, and all this was based upon their references using the Township GIS, which is generally accurate to + or - one foot and should not be considered as a legal survey. Mr. VanDenBrand suggested, if a variance was granted, that the variance be allowed up to a maximum number of feet, rather than being based upon the building itself.

Mr. Bushouse asked who owned the pine trees in the photograph. Mr. Perrin indicated that his neighbors thought he did, and he thought his neighbors owned them. He said no one was absolutely sure.

Ms. Bell asked why there was even a discussion about the cul-de-sac. Mr. VanDenBrand said he had referenced it because of the impact he thought it would have on whether there was a practical difficulty. Ms. Bell said that her concern over the request was the fact that there appeared to be other options, regardless of the impact of the cul-de-sac.

Mr. McClung asked if the applicant could narrow the garage. Mr. Pulver said they could if they reduced the 9-foot door to an 8-foot door, but that the addition would still intrude into the setback area.

The Chairperson asked how much room was available in front of the garage before encroaching into the front yard setback area. Mr. VanDenBrand indicated there would be about 27 feet available in front of the garage, assuming the temporary cul-de-

sac were gone. Attorney Porter noted that, as long as the temporary cul-de-sac was there, the front yard setback would be measured from the existing right-of-way, even if it was only temporary; Ms. Bugge concurred. Therefore, there was no room for building in front of the garage.

Ms. Bugge pointed out that there was space outside of the setback area to either build a garage on the north side of the home or to build an outbuilding to the rear of the home.

Mr. Bushouse said that he hated to see the Board allow an intrusion in the 10-foot setback area. He said every time a variance was granted, it was eating away at the standards as set by the Ordinance, and he did not believe there was sufficient basis to grant such a variance. He said that there were numerous options in this case, including building behind the home or waiting until the road went through and the temporary cul-de-sac was abandoned, so there was not a compelling need to grant the variance.

Mr. Perrin asked how many other cul-de-sacs of this type existed. Attorney Porter noted that was not the key question. He said the fundamental question was, could the property be used in compliance with the Ordinance? He said he thought the Board members had answered that question. Mr. Perrin indicated that he thought they could reduce the encroachment with an 8-foot door, requiring only a 2-foot variance.

There was a brief discussion regarding where the roof line would fall in response to Mr. Perrin's proposal and which direction it would run. After a brief discussion, the Chairperson said she would entertain a motion. Mr. McClung made a motion to grant a four-foot yard setback variance, to-wit: allow the garage to be constructed six feet north of the south property line. The motion failed for lack of support.

The Chairperson asked for another motion. Mr. Bushouse made a motion to deny the variance as presented for the reason that granting the variance would set an adverse precedent, and there were other options available to the applicant. Mr. Anderson seconded the motion. The Chairperson called for further discussion on the motion. Hearing none, she called for a vote on the motion. The motion passed 4-to-1, with Mr. McClung voting in opposition.

Any Other Business

KALAMAZOO POOL - SITE PLAN AMENDMENT TO PERMIT REVISED SIDING - 3357 SOUTH 9TH STREET - (PARCEL NO. 3905-35-205-191)

The Chairperson indicated that the next item on the Agenda was a request for site plan amendment by Kalamazoo Pool. The Chairperson called for a report from Ms. Bugge. Ms. Bugge submitted her report dated January 22, 2008, and the same is incorporated herein by reference.

Ms. Bugge indicated that the applicant had received site plan approval on March 27, 2007. She said part of that approval included lapped-wood siding, as set forth in the minutes of March 27, 2007. She said the applicant was now asking for approval of vinyl-shake siding above synthetic stone instead of the lapped-wood siding.

After reviewing a photograph showing the proposed change, followed by a discussion with the applicant, the Zoning Board of Appeals' members concluded that the change met the spirit and intent of Section 33.409b of the Ordinance. Therefore, Mr. McClung made a motion to approve the proposed amendment to the site plan to allow vinyl-shake siding, as submitted, and synthetic stone from the two windows west of the doors facing the south side of the building, all the way to the east. The motion was seconded by Ms. Bell. The Chairperson called for a vote on the motion, and the motion passed unanimously.

Discussion with Township Attorney

The Township Attorney presented the Board with a memo entitled, Variance Information Sheet. Attorney Porter indicated that the courts in Michigan had laid out the necessary criteria for the granting of a variance. He explained that variances are, in essence, an authorization to break the law, and that should only be allowed in those cases where the criteria set forth on the Variance Information Sheet could be met. Attorney Porter then took the Board through a review of the basic criteria for the granting of a non-use variance. He also noted that use variances should not be granted by the Board and that economic hardship should not be a factor in considering non-use variances.

At the conclusion, the Board suggested that the Variance Information Sheet be given out to all applicants. Attorney Porter indicated that he would prepare that handout for the Planning Department to distribute to those persons applying for variances. He also suggested that perhaps the Board use the Variance Information Sheet as a check sheet for consideration of variance requests in the future. Attorney Porter did note that he thought the Board did a good job of following the criteria, but he suggested that, if they followed the criteria in a more systematic fashion, the applicants would have a better understanding as to why their requests were granted or denied.

2007 Annual Report

The Board accepted the Annual Report for information.

Public Comment on Non-Agenda Items

None.

Adjournment

There being no other comments, the meeting was adjourned at approximately 4:00 p.m.

Minutes Prepared:
January 28, 2008

Minutes Approved:
February 26, 2008